

January 17, 2006



**TRANSCRIPT**  
**January 17, 2006**

**MONTGOMERY COUNTY COUNCIL**

**PRESENT**

George Leventhal, President	Marilyn J. Praisner, Vice President
Phil Andrews	Howard Denis
Nancy Floreen	Michael Knapp
Thomas Perez	Steven A. Silverman
	Michael Subin



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1 Council President Leventhal,  
2 Reverend Carolyn Roberts of the United Church of Christ of Seneca Valley is here for  
3 an invocation.

4  
5 Reverend Carolyn Roberts,  
6 Will you be in an attitude of prayer? Gracious God, few have such first hand experience  
7 with such diverse needs and such a diverse County in its makeup as those sitting  
8 before us as the Montgomery County Councilmembers. We know that these members  
9 are called to address issues as wide ranging as environment and education and  
10 transportation. We know that they are called to create community in which crimes of  
11 hatred such as those that have marred public buildings and places of worship as we  
12 have seen so recently are not to be tolerated. We know that they are called to deal with  
13 issues created when attention to oversight falls short, the issue that is on the agenda  
14 today in Clarksburg. We know that often they must operate in a climate of distrust, and  
15 as we have seen on the streets just this morning, in a climate of fear. We ask your  
16 presence, that they may govern with wisdom and with fairness, today and in the days to  
17 come. Amen.

18  
19 Council President Leventhal,  
20 Amen. Thank you, Reverend, for those very timely and thoughtful words of wisdom.  
21 Welcome back, everybody it's been a long break. We've all had had a chance to --  
22 yeah, you're the Vice-President now.

23  
24 Councilmember Silverman,  
25 Wrong Seat.

26  
27 Councilmember Praisner,  
28 Gee, is that ever funny!

29  
30 Council President Leventhal,  
31 We've had a good break and we've had some rest.

32  
33 Multiple Speakers,  
34 [ INAUDIBLE ]

35  
36 Council President Leventhal,  
37 We've all probably ingested too many calories. I enjoyed the article in this morning's  
38 Style section about Governor Mike Huckabee, he's a role model for me, I'd love to have  
39 cheekbones like that. We've all got our New Year's resolutions, but this morning we're  
40 going to make some progress and maybe achieve some of our New Year's resolutions.  
41 So here we are, we have General Business, Agenda, and Calendar changes.

42  
43 Linda Lauer,  
44 Good morning, I have no changes to report and we've received no petitions. Thank you.



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1 Councilmember Praisner,  
2 We've been on holiday.

3  
4 Council President Leventhal,  
5 Okay. Approval of minutes, we have before us the minutes I think.

6  
7 Council Clerk,  
8 Minutes of December 6.

9  
10 Unidentified Speaker,  
11 Move approval.

12  
13 Councilmember Praisner,  
14 Second.

15  
16 Council President Leventhal,  
17 Motion is made and seconded. Without objection, the minutes are approved. Consent  
18 calendar...

19  
20 Councilmember Floreen,  
21 Move approval.

22  
23 Council President Leventhal,  
24 Okay...

25  
26 Unidentified Speaker,  
27 Second.

28  
29 Council President Leventhal,  
30 Motion is made and seconded. Ms. Praisner.

31  
32 Councilmember Praisner,  
33 I just wanted staff, when we get to the MFP Committee discussion on the approval of  
34 the franchise agreements, where they are renewals of existing -- or what were franchise  
35 agreements to give us a feedback on the time frame associated with renewals and why  
36 they're taking so long between when that franchise expires and when we get the  
37 renewal. So if we can have that conversation in MFP, I would appreciate it. Thank you.

38  
39 Council President Leventhal,  
40 Okay. I see no other lights on the consent calendar. Those in favor of the consent  
41 calendar will signify by raising their hands. It is unanimous among those present. The  
42 next item is a discussion with Dr. Royce Hanson -- let me actually suggest, first of all, I  
43 want to literally see a show of hands. Does everyone have Memorandum Number 2  
44 from Dr. Hanson?



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1 Unidentified Speaker,  
2 Yes.

3  
4 Council President Leventhal,  
5 Okay. We had suggested that this item would come up at 9:45 and I think we might  
6 benefit from a five minute recess just to read Dr. Hanson's memo. I'm only halfway  
7 through it myself. So let me suggest -- we can stay right here but let me just suggest  
8 that the Council take five minutes to read the memo and then we'll be right on schedule  
9 at 9:45, thanks.

10  
11 Unidentified Speaker,  
12 [ no audio ]  
13 [ music ]

14  
15 Council President Leventhal,  
16 All right, Dr. Hanson, thank you so much for being available to us. You bring an  
17 extraordinary combination of experience and candor and we appreciate both. And so we  
18 have two memos from you. I don't think we need you to read your memos. We've read  
19 them, and you may feel free either to hit the highlights from the memos or to express  
20 yourself on the main points or any other points that you want to bring to your our  
21 attention.

22  
23 Dr. Royce Hanson,  
24 I thought if it's okay with you, Mr. President, that I would basically summarize some of  
25 the major ideas in the memoranda. And I'm sorry, I was only able to get the second one  
26 to you this morning. I spent a lot of time thinking about it, and probably didn't move as  
27 fast as I might have.

28  
29 Council President Leventhal,  
30 Could I for just one second before you get started? I actually this morning, in prep for  
31 this session, went to the George Washington University website and looked up your CV,  
32 and I want to ask...

33  
34 Dr. Royce Hanson,  
35 You really need to get a better job, Mr. President.

36  
37 Councilmember Perez,  
38 I try to tell him that.

39  
40 Council President Leventhal,  
41 Your extraordinary background is commensurate with your modesty but I really do want  
42 the media to understand what you bring to this, and rather than a recitation either by me  
43 or by you of your qualifications in this area including two terms serving as Planning  
44 Board Chair and many, many other relevant experiences, I'd like to ask our staff to  
45 make your CV available. I don't want to embarrass you, but I do think it's important as



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1 we have they discussion that those who are interpreting it for the public understand who  
2 you are and what you bring to this conversation. So I'm going to ask our staff to  
3 distribute your CV unless you have any objections.

4  
5 Dr. Royce Hanson,  
6 I have no objection.

7  
8 Council President Leventhal,  
9 It's at my request.

10  
11 Dr. Royce Hanson,  
12 You've got two memoranda, the first is titled "Do Not Harm" and the second is titled "Do  
13 Some Good." I think both are important. The first memorandum deals largely with the  
14 legislative issues that you have before you and I think you have a hearing on some of  
15 those this evening or later this week. Unfortunately I can't be here this evening because  
16 my classes start at the University this evening. I'm suggesting that you approach the  
17 legislation with caution and that you don't adopt any of the bills before you without some  
18 change in them, and some probably not at all, that you act comprehensively rather than  
19 in a piecemeal or an ad hoc fashion to deal with these issues and that wherever feasible  
20 that instead of embalming today's current ideas in legislation that you ask the Planning  
21 Board to use its real making authority to adopt the kinds of procedural changes that are  
22 suggested in much of the legislation. The state legislation which is being drafted which  
23 would give the Planning Board subpoena power, I'm recommending that you not  
24 support that legislation, that you do not move site plan enforcement to the Department  
25 of Permitting Services and that you substantially improve your own oversight to ensure  
26 that your intentions are being carried out and that the problems of procedure and  
27 process are corrected and that the revised systems are working. Now, when I say just  
28 use the legislation only to authorize the Board to assign contested violations to a  
29 hearing examiner rather than to allow the Board to refer any subdivision or site plan to a  
30 hearing examiner. The subdivision and site plan hearings are essentially problem-  
31 solving processes. They are not inherently adversarial operations. And it seems to me  
32 that there's a better way to deal with this. Contested violations, however, it seems to  
33 me, should go to a hearing examiner because that allows a neutral finder of fact to  
34 assess the situation, rather than have the Board sit essentially in judgment of its own  
35 cause. When an alleged violator disagrees with the staff's findings of fact that would be  
36 a reason to send a hearing examiner. When there's an agreement on facts, but a  
37 contest over the remedy or the penalty or where there's a complaint coming in from the  
38 public, the staff investigates the complaint, finds no violation and the complainant still  
39 thinks there is one, would be another case which might to go a hearing examiner. The  
40 legislation -- the state legislation would also increase fines for violations, it seems to me  
41 that that's probably a reasonable and good thing to do so there is much more clarity  
42 about that issue. And you may need to do some text amendment work to clarify the  
43 Department of Permitting Services' duties with respect to permits. I've dealt with that on  
44 pages 9 and 10 of the first memorandum. When I'm saying don't transfer site plan  
45 enforcement to DPS, let me explain the reasons why I've come to that conclusion. I



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1 think it's very important that we distinguish between enforcement of measurable  
2 standards that are contained in the zoning ordinance, from compliance with a site plan.  
3 The objective of site planning is to improve the quality of development, and much of  
4 what's in a site plan involves urban design judgments and whether or not to amend the  
5 site plan involves judgment. Amendments by the builder to a site plan that would be  
6 beneficial to the public, improve the quality of the development should be encouraged  
7 and facilitated, not looked on as potential violations. So that you need somebody who is  
8 familiar with the site planning process, the objectives and intent of site planning, to help  
9 make those judgments as to whether to move this forward as a violation or to tell the  
10 builder, "No, that's not a good idea, we don't think we could support that particular  
11 approach." There does need to be much closer coordination apparently between DPS  
12 and Planning Board staff in dealing with both the enforcement and compliance aspects  
13 of site plan to provide quality control. Think there probably needs to be some cross-  
14 training, there needs also to be a team approach to this so that the DPS inspectors  
15 dealing with zoning and building Code issues work very closely with Planning staff. On  
16 very large projects such as Clarksburg, I'm suggesting that It may be reasonable for the  
17 Planning Board to require builders to pay for an on-site Project Manager who could be a  
18 reimbursement to the Planning Board but it could be a contractor, just as you have a  
19 Contracting Supervisor or Architect or Engineer associated with a large building project.  
20 And his job is to make sure that things are done right and that they're done timely, and if  
21 there are problems that require change, they're brought promptly to the attention of the  
22 people responsible for making the change. The Board, I think, should hear all sites  
23 plans as I've mentioned. They shouldn't be farmed out to a hearing examiner, and they  
24 should hear all amendments or approve all amendments to site plans. The staff report I  
25 think could be modified in some ways so it comes in the form of a draft opinion or a  
26 resolution that would make the necessary findings of fact, make the necessary  
27 interpretations of the master plan or the project plan to make sure of consistency and so  
28 on. If the Planning Board wishes to change those proposed conditions, then -- or  
29 findings -- then they should base those changes on the record, state the reasons for  
30 them so that there's substantial evidence available for court review of the decision. It  
31 seems to me that the opinion or resolution of the Board should take place within a  
32 couple of weeks after the closing of the record. Long periods of time are not a good  
33 idea. One of the issues that I know you're very concerned with is the cost of housing.  
34 The longer stuff gets delayed, that does add marginally to cost, and one should be  
35 careful of that. Now, site plans are not always drawn as the Board requires in its  
36 conditions instantly. So, in fact, it may be some time -- weeks, months, even as much as  
37 a year -- before a site plan that is consistent with the decisions of the Board and the  
38 actions of the Board, is actually drawn and presented. Now what I'm suggesting is that  
39 when that happens, the applicant should certify that it conforms with all of the conditions  
40 and actions of the Board and that the Chief of Development Review should essentially  
41 co-sign or also make that certification. In a sense this is a ministerial function. It's the  
42 action of the Board is in its opinion or in its resolution. And the ultimate drawing that  
43 goes over to DPS for the permits is ministerial in its character and the main thing you  
44 want to be sure is that response -- that both the developer takes responsibility for  
45 conformity and that the Development Review has looked at it and assures that it is, in



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1 fact, in conformance with the recommendations. Now, I've made a little note in here too  
2 that I think we want to be careful when we talk about conformance or consistency. The  
3 current zoning ordinance uses "consistency" pretty much throughout. There's a change  
4 to "conformance." The definitions overlap but the problem is, I think, that if you change  
5 them and this ever goes to court, a court's going to say, "Well, how come they changed  
6 that? If they mean the same to Webster, they must have meant something different to  
7 the Council." And the problem arises if you're talking about consistency of a site plan  
8 with a project plan, that's one thing. A project plan is schematic and is a sense a  
9 demonstration that the developer intends to meet the requirements of the sector plan or  
10 the master plan in the design of the project. It is not a drawing in the same sense that a  
11 site plan is a drawing with dimensions on it and so on. If you say, "must conform to the  
12 project plan," you then are moving forward into the project planning stage a lot of stuff  
13 that will probably have to be required that is really unnecessary at that stage. So I'm  
14 recommending that whether do you this by legislation or whether it's done by resolution  
15 or by a regulation that some care be taken to think through whether or not that language  
16 change is desirable. Now, when you get to the question of the drawing of the site plan  
17 then "conform" may be the right word to use, that it should conform to the actions that  
18 have been taken by the Planning Board. The rules, it seems to me, ought to provide  
19 then that we're dealing here with administrative hearings, they're not -- you know,  
20 adjudicatory findings are made in the process, but a lot of other stuff is also done in the  
21 process. So I think that too much formality is not helpful in solving problems. The ---  
22 there should be on amendments to the plan that it seems to me that these can be  
23 handled with staff making a recommendation for or against the amendment in a very  
24 short memorandum, again, which could be placed on the planning -- with notice on the  
25 web and by e-mail and "snail mail" out to parties of interest, could be placed on the next  
26 Board agenda if there is no objection as a consent item, just as you've just gone through  
27 a consent calendar here. If there is an objection from a member of the Board, a  
28 substantial objection from the public, or an objection from the applicant who disagrees  
29 with the staff, then Board can set it over for a hearing at the next available time. Again,  
30 the objective here is to encourage amendments that improve projects, to discourage  
31 amendments that don't improve projects, and then there are some situations where  
32 changes can be made in the field that do not rise to the level of being an amendment.  
33 For example, if there are dimensional requirements in the zone, but on the site plan,  
34 before there are buyers, the developer has shown a footprint for a house, but the buyer  
35 doesn't want Model A, which is shown on that footprint but wants Model B. So long as  
36 the requirements of the zone for setback height and so on are not involved it seems to  
37 me that doesn't rise to the level of having to be an amendment to a site plan and there  
38 may be other illustrations. Some of this can also be handled, of course, by the way in  
39 which the Board couches its conditions on -- landscaping as very good illustration of  
40 this. Where it can make the final landscaping plan contingent on approval by the  
41 Landscaping Architects at the Board or by the urban designers. So there are ways of  
42 dealing with this that don't make federal cases out of minor -- and I won't use the word  
43 "minor" -- insignificant matters. So that's essentially what I've tried to do in the first  
44 memorandum. The second memorandum which you received this morning, which is  
45 titled "Do Some Good" suggests that Clarksburg is a symptom of more systemic



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1 problems, that the Board has had weak institutional and intellectual leadership. One of  
2 the key problems is the absence for sometime of a strong professional Planning  
3 Director. Currently there are vacancies at the top. The Board is advertising currently --  
4 or just closed advertising on the 15th for a Director of Parks and Planning. My view is  
5 that whatever your reasons were and whatever the Board's reasons were for combining  
6 those jobs some years ago, that's an awful mistake, and it really needs to be undone.  
7 So the current strategy, I've attached the current ad at the back of this memorandum for  
8 a Director of Park and Planning, and very frankly you can read that ad and not even  
9 imagine that what you're looking for is the kind of strong intellectual and professional  
10 leadership that would be required of a Planning Director. So that's a problem. The other  
11 problem that I think the Council needs to address is that it's going to be very hard, I  
12 think, to find a first-rate, permanent Planning Director without knowing whether or not  
13 the leadership of the Board is stable and continuing. So I think you need to make a  
14 decision both for the good of the Commission and with respect of the chairman of  
15 whether or not he will be retained. The problem with the -- another problem is over time,  
16 a loss of effective quality control of the staff work and there is currently a morale crisis in  
17 the staff. There is a perception among many staff of a loss of respect for their  
18 professionalism. There is a perception among some that there has been pressure that  
19 they become primarily a development production agency in processing applications,  
20 and that it should be expedited, and there is currently a loss of experienced senior staff.  
21 There needs to be, of course, stronger oversight both by the Board and by the Council  
22 in this regard. Now, the reason I put such an emphasis on the leadership issue is  
23 because contrary to some comments that I received as I was doing interviews, Well,  
24 Montgomery County is really building out and we don't-- you know, implementation is  
25 the issue today. Probe a little further on that and I think most people conclude that, sure,  
26 implementation is really important, but with a mature county, planning is more important  
27 than it ever has been because I spend most of my time, professionally, dealing with old  
28 cities. Let me tell you something. If you think stuff is hard in Montgomery County, try  
29 dealing with Cleveland...

30  
31 Unidentified Speaker,  
32 [ INAUDIBLE ]

33  
34 Dr. Royce Hanson,  
35 -- Jane Campbell just got defeated --

36  
37 Multiple Speakers,  
38 [ laughter ]

39  
40 Dr. Royce Hanson,  
41 ...or Baltimore, or any other mature city. Going back and dealing with infill development  
42 and with aging infrastructure, with rapidly changing demography, and the housing needs  
43 of people, dealing with changes in the structure of the economy, and what that does to  
44 your land use requirements and needs are extraordinarily difficult problems, and they  
45 require a lot of imagination and creativity and help. Now, you can't -- your Chairman and





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1 your Planning Director really have to operate as a team. You can't expect the Chairman  
2 to be a Director of Planning. The Chairman of the Planning Board has under the statute  
3 no executive authority. What I've told some of you is that he operates in a modern  
4 organizational framework; nobody is in charge, but he is responsible. Now that's a  
5 subtle but important distinction to make in an organization. The Chairman has no more  
6 formal authority than any other member of the Board, so his ability to function rests on  
7 three pillars. That is the continence of the Council as your principle policy advisor, as  
8 the public advocate for the planning objectives of the County, and very, frankly, as a  
9 lightning rod, politically. Now I always make the distinction because you're the lightning  
10 rod, you shouldn't confuse that with being able to cause the lightning -- but it's an  
11 important function that the Planning Chairman provides for all of you. Now the second  
12 pillar is the support of the Board which is obtained basically through collaboration and  
13 persuasion and by transparency, and third is the respect of the staff. Which means  
14 creating an environment for excellence and establishing bonds of trust with the Planning  
15 Director, the Park Superintendent, and others. Now it also -- leadership also requires a  
16 more engaged Board. I've told, I think, each of you that one of the things that surprised  
17 me after being away from the County for a number of years and coming back was that --  
18 and serving on a couple of advisory committees -- that Board members were not  
19 chairing those committees. There's a reason for having board members chair  
20 committees, and that is that, first all, they can perform a uniquely political function that's  
21 inappropriate for the staff to perform. And that is mediating -- it's alleged to me at any  
22 rate, that developers and neighborhood groups still disagree with each other in  
23 Montgomery County. And that it's useful to have someone who is a citizen board  
24 member in the role of reconciling those things so that the staff can perform their  
25 professional role more effectively which is to say, "We hear what you're saying and we  
26 hear what you're saying, but from a professional point of view, from a good planning  
27 point of view, this is what we think would be the best situation here." Now it's the  
28 chairman's response -- or the chairman of these committees, the board member's  
29 responsibility then, it seems to me, to be able when this matter comes back to the  
30 Planning Board to say here's what the issues are, here's why people are disagreeing  
31 with staff recommendations on one thing or another, here's why they are disagreeing  
32 with each other, and to be invested also in the success of have plan. So that matter of  
33 being able to bring in the intelligence from the process, being able to free the staff to be  
34 the staff, rather than to be the mediator I think as very important role that needs to be  
35 revived, and my conversation with board members indicates that I think most would be  
36 quite willing to do that. I don't know when the practice fell out of favor, but I think when  
37 you appoint people, you ought to go through this process a little bit with them in terms of  
38 what the expectations are. Now, strong intellectual leadership requires clear and  
39 coherent planning policy and that has to come both from the Planning Board and from  
40 the Council. It has to assume that the Planning Director is essentially a teacher of the  
41 Board and the Council. They don't get graded on the lessons, you know, it's the other  
42 way around. They grade the teacher. That's sometimes happens in universities as well.  
43 But most important, it requires a lot of staff leadership and mentoring of junior staff and  
44 rigorous quality control of the products that are ultimately to come before the Board and  
45 the staff. One of the elements that was in one of the pieces of legislation was a



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1 suggestion that the -- in the definition of the Planning Director, was a person who  
2 reported directly to the chairman. I think that's not a good idea. The Planning Director  
3 reports to the Board. I think it would be a mistake to give the chairman the -- sort of the  
4 exclusive responsibility, makes it a little harder for the chairman, but that's good. That's  
5 good for the soul. So I'm suggesting that the Council -- you've asked me to look at what  
6 you could do to improve your oversight -- so -- and you asked me for my  
7 recommendations with the [Barkov's] so here there are. You need to decide on the  
8 leadership of the Board. You need to clarify your expectations of board members. You  
9 need to use your semi-annual meeting with the Planning Board to deal with important  
10 stuff rather than the complaint of the week. You need to use those, it seems to me, that  
11 the Chairman of the PHED committee and the Chairman of the Planning Board, and the  
12 President of the Council should get together some weeks before this meeting is to occur  
13 and with the Planning Director develop an agenda that is substantive and deals with  
14 important and key issues that you either have to deal with in the short term and ones  
15 that are coming up on the horizon that you need to begin to be aware of and to begin to  
16 work on. You need to provide the necessary support for the reorganization of these top  
17 professional positions. If there is need for a management person at the Parks level or at  
18 the Planning Board level, it seems to me the way to do that is with a deputy rather than  
19 with an intervening administrator between these folks and the Planning Board. You  
20 need to act on planning issues in context. One of the things that I've noticed -- you  
21 probably have too -- is that you get a lot of zoning text amendments up here. Some of  
22 them -- a lot of them -- have relevance to other zoning text amendments that come in  
23 from a different window. There are other issues that may deal with water and sewage,  
24 that may deal with environmental issues, that may deal, for instance, in the Ag Reserve  
25 with the issue of what do you do with a super -- should have a super TDR, doing one of  
26 those things impinges on whether or not you even can do one of the others or can do it  
27 well. And the Planning Board needs to help you, it seems to me, a little more than you're  
28 getting help now, in putting these things in context so you can deal with them  
29 comprehensively and within the context of what you're trying to achieve in terms of  
30 general plan objectives rather than instance by instance. The danger I see in that some  
31 of these ad hoc decisions, some of which look perfectly fine in isolation, really add up to  
32 less than the sum of their parts and can endanger some of the other objectives that you  
33 have. You need to review the new development review process that is being put in  
34 place by the Planning Board and any new process regulations that they establish. I've  
35 suggested that one way of doing this is not to take my word for it or not take anybody  
36 else's word for it, but to see for yourselves. And that is, I know some of you went down  
37 to Planning Board last week for a little tutorial -- or they came here. I'm suggesting that  
38 you go -- once they've got this in place and have tested it with a few cases that you all  
39 go down, and have the Planning Director and the Chairman and the staff walk you  
40 through the process. So that if you've got questions with any stage of it or aspect of it,  
41 you can ask them, you can get answers, you can satisfy yourselves that the things that  
42 have been done are useful and workable, and are achieving the objectives that you  
43 want. I think once you've done, that you can satisfy yourself, you can satisfy the public  
44 that the immediate issues that you're dealing with have been corrected, and the Board, I  
45 know, is working very earnestly and very hard on this. Finally, two other suggestions:



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1 One is that you ask for a zero-base program budget so that instead of simply looking at  
2 personnel, equipment, supplies, et cetera, you look at the way in which people and  
3 resources are allocated across the programmatic activities that you've asked the Board  
4 to perform. This imposes a discipline on staff and Board in thinking through things. It will  
5 disappoint in you some cases because if you do it that way, when you come to a  
6 meeting and you say, "Well, why aren't you doing so and so?" the Board is likely to say  
7 back to you, "We'd be happy to do that if you'll allow us not to do something else." But  
8 you can't keep stacking stuff on top of an already full plate without producing a problem  
9 of overeating and under consumption. And finally, one of the things that emerges from a  
10 lot of discussions, not immediately on your plate -- it has been, but it really needs to be  
11 done -- is you should provide the support necessary for a revision of the zoning  
12 ordinance. It's a mess. And it really needs to be corrected. Again using a task force on  
13 this of experts makes a lot of sense to me chaired by a member of the Board, again so  
14 that you have that connection and someone responsible back to his colleagues or her  
15 colleagues who can say this is -- these are the kinds of issues that arose in this, and  
16 this is the way, you know, maybe we can begin to satisfy and reconcile these things. So,  
17 that, Mr. Chairman, is a summary of what I've given you, and I'll be glad to respond to  
18 questions.

19  
20 Council President Leventhal,  
21 Well Royce, thank you very, very much. You have once again provided your great  
22 service and you're a wise head and we appreciate it very much, and the County  
23 appreciates the many years of service that you've provided and most recently these  
24 recommendations with the [Barkov].

25  
26 Dr. Royce Hanson,  
27 Well, you got what you paid for.

28  
29 Multiple Speakers,  
30 [laughter]

31  
32 Council President Leventhal,  
33 I wanted to say a few things, I'll call -- after I've made a couple of comments, I'll call on  
34 Chairman Silverman followed by Vice-President Praisner, followed by Ms. Floreen. Let  
35 me just, again, thank you, Royce, and I also want to thank Tom Perez who, as my  
36 predecessor as Council President, asked you to do this for us. That was a good call on  
37 Tom's part. Whether or not we adhere to every single one of your recommendations, I  
38 know we all benefit of someone from your experience and your stature making the  
39 recommendations and certainly for me, as one Councilmember, you've provided me  
40 with an enormously helpful framework to pursue these issues. There's one specific  
41 assertion you make that I just want to ask Chairman Berlage to respond to because I --  
42 and what I want -- first of all let me suggest that Chairman Berlage actually prepare a  
43 response for next week to Dr. Hanson's comments. So let us not ask you today since I  
44 know, certainly with respect to memo two, your seeing it for the first time. But let us  
45 have time on next week's agenda for the response of Chairman Berlage and his



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1 colleagues, if that's feasible, to pull together in that time frame, to what Dr. Hanson has  
2 presented.

3  
4 Derick Berlage,

5 I'd be delighted to do that. I would also point out that we are just this week providing you  
6 with a management improvement plan which will contain within it answers to many of  
7 the issues that Mr. Hanson raises. Obviously he hasn't had a chance to see that yet, no  
8 one has, it's coming out in the next day or two.

9  
10 Council President Leventhal,

11 Very good, there is one specific thing that you and I, Chairman Berlage, had talked  
12 about that, I just want to get clear on this, and that's the issue of whether the American  
13 Planning Association is being used for consulting or for assistance in the hiring of a new  
14 Director of Planning. I had asked you about that off line, and you'd said that you were  
15 working with the APA on that. Dr. Hanson's memo says that there was an offer from  
16 APA that was declined or not taken up, and I just want to understand the status of that.  
17 Are we utilizing the good offices of the American Planning Association in hiring a  
18 permanent Director of Planning?

19  
20 Derick Berlage,

21 We utilize the good offices of American Planning Association in all of our hiring. It is an  
22 excellent resource. That's not to say, however, that it would necessarily be appropriate  
23 for us to turn over the job of managing the recruitment of a new director to the APA,  
24 which is a private organization, and not one that is subject to our direction. We are  
25 engaged as we would be for any high-level position in a national search. We have  
26 retained a recruitment firm that takes direction from the Planning Board itself, and it will  
27 manage, with the Planning Board, the recruitment. So the only issue I could see -- I  
28 don't really understand the concern, if the concern is that APA ought to be running the  
29 recruitment for Montgomery County's Director of Park and Planning I think we would  
30 disagree with that.

31  
32 Council President Leventhal,

33 Was there some offer made by APA that was turned down by our Planning Board?

34  
35 Derick Berlage,

36 Not that I am aware of, but I will be happy to respond to that at a later point.

37  
38 Dr. Royce Hanson,

39 There was I believe, I believe there was an offer in a letter, I don't know whether you  
40 ever got the letter that [Mel Rifkin] read at the forum on December 10th from APA  
41 offering to help in the recruitment. My concern is not...

42  
43 Derick Berlage,

44 I'll be happy to look at it, we're delighted to use any assistance they can provide, we  
45 always do.



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1  
2 Dr. Royce Hanson,  
3 My concern was not that the...

4  
5 Derick Berlage,  
6 I think that is a nonissue.

7  
8 Dr. Royce Hanson,  
9 I hope so.

10  
11 Council President Leventhal,  
12 Okay, let me say about -- Royce, I really appreciate so many points in your memo and  
13 there will be ample time to take them up and discuss them. One thing that jumps off the  
14 page because it's been so much on my mind is the need for coordinated staffing. You  
15 talk about sand mounds and mega churches and building lot terminations and TDRs,  
16 and we're dealing with them all at the same time, they all affect each other, but we're  
17 dealing with them piecemeal. And we get from the Planning Board on the Planning  
18 Board's time frame information based on things that the Planning Board has taken up,  
19 but we need the Planning Board to track what the Council is taking up and to provide us  
20 coordinated advice on issues that fall into a basket of issues. Let me also say and I've  
21 said this many times, and I want to say it again, I believe the lessons of Clarksburg are  
22 not limited to Park and Planning with specific reference to staffing the County Council,  
23 let me say to our own staff with specific reference to the policy in the Ag Reserve, since  
24 you've touched on it. I think we need better coordination and a more comprehensive  
25 approach to that issue and I'm afraid on our own staff we rely on the Planning Board to  
26 assist us in staffing and in thinking and in policy background, but we have our own staff  
27 and I'm afraid we're dealing with that in a piecemeal way. And let me say to other  
28 agencies, I mean, look, my car when I put my key in it, the engine starts and it sounds  
29 okay, and I'm able to get where I want to go. And if the brakes are squealing or if the  
30 engine is groaning, then I know there's a problem and I take it in for a checkup. But  
31 most of the time I expect that when I turn the key in the ignition, the engine turns over  
32 and I'm able to get where I need to go. Most of the time I expect that when I turn on the  
33 light switch in my home, the lights go on. If there's a problem I know I need to check it  
34 out, I need to replace a light bulb, or maybe there's a power outage and I call PEPCO.  
35 Most of the time with most of the agencies that either support the Council, or fulfill the  
36 work of the Executive Branch, we are not at a highly agitated state of intense oversight.  
37 Most of the time it's the Planning Board, whether it's WSSC, whether it's the school  
38 system, whether it's any Executive agency, we take it for granted that things are running  
39 well in this well-managed County. And then we find, as with WSSC, as with the  
40 Planning Board, that there are issues that demand our intense attention and we devote  
41 our intense attention. Your memo provides us with the excellent reminder of the kind of  
42 far-reaching and visionary oversight that we should always be providing, not only at the  
43 Planning Board. And so what this makes me think, if I were an agency head not  
44 Planning Board, you know, wiping my brow with relief that I'm not getting this kind of  
45 scrutiny, I would just simply hope that all agency heads are drawing from the lessons of



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1 Clarksburg. That we're all looking at our recordkeeping, that we are all looking at our  
2 management, that we are all looking at our responsiveness to the public. I've sounded  
3 this note before, but I going to keep sounding this same note. We've got to internalize  
4 these lessons as an oversight body, as a budgetary body. We could make a case that  
5 the Planning Board is uniquely important and it has a unique role. But we certainly had  
6 severe problems a year ago at WSSC. The school system represents half of our  
7 budget. I hope we're devoting adequate oversight to that and the many agencies that  
8 fulfill important public functions, so I think there are important lessons to be drawn for all  
9 of us. Let me call on Chairman Silverman.

10  
11 Councilmember Silverman,

12 Thank you Mr. President. Royce, thank you for bringing what you have to the table in  
13 terms of background. And also I think one of the great benefits is the fact that you  
14 haven't been engaged for a while and so you've got a perspective that goes back to  
15 when you were Chair and leading a great agency, to now being able to come in as  
16 somebody who brings expertise and also hasn't been mired in the scrum that passes for  
17 decision-making in Montgomery County for the past few years. I want to -- I have a  
18 couple comments and a couple of specific questions. I do want to go back to something  
19 that Derick said which is that we have specifically asked for and we will get this  
20 management improvement plan this week, which I do fully expect will address many of  
21 the issues that you've raised. And if it doesn't, then we'll certainly incorporate those into  
22 the discussion. We've had a system in place as best as I can understand it, for as long  
23 as anybody can remember. And as it relates to the regulatory side of the agency, in  
24 effect, what I was told when I got here eight years ago was that while we have budget  
25 authority over the Planning Board, the decisions about site plans, the regulatory side of  
26 the agency is in the hands of the agency as an independent agency, and, as a result, I  
27 think most of us have taken the view that it's inappropriate in many cases to wade into  
28 any specific cases, to wade into telling the Planning Board what our views are on site  
29 plans, much less site plan amendments. We may have personal views about things, but  
30 we have understood, I think because this has been the system in place, that there is a  
31 regulatory function, and then there's the other side which is the Park side, and then  
32 there's the Planning side. And so while we have always felt comfortable, I certainly have  
33 yelling and screaming about why XYZ park isn't getting rehabbed in a timely fashion or  
34 where is the study on something we asked the Planning Board to take a look at a year  
35 ago, at least for myself, I think we have been very respectful of the fact that Park and  
36 Planning is an independent state-created agency, and we don't have the ability to tell  
37 them the nitty-gritty of their enforcement process. Having said all of that, I agree with  
38 your recommendation about ensuring that the development review process reformatations  
39 that the Planning Board is putting on the table and has already implemented at various  
40 levels should be something that our committee would take a close look at, and we'll do it  
41 in connection with the review of the management improvement plan. I do think it is  
42 important for us to get the benefit of a walk-through of the system, however long it  
43 takes, so that we understand what somebody is going through when they're applying.  
44 Because we've certainly heard criticisms over the years from the building industry about  
45 that, but also to understand whether or not the system provides the kind of access and



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1 transparency that community members want and that the public has a right to expect.  
2 So I look forward to doing that as well as the issue of the Board adopting and publishing  
3 rules of procedure to ensure responsiveness, transparency, fairness, and thoroughness.  
4 We have I think learned a lot in the last six months about the Planning Board's practices  
5 -- which is not to criticize them. The question is whether or not those practices are a  
6 function of the way an individual staff member was doing their job as opposed to this is  
7 what the position is supposed to be doing, and everybody understands what they're  
8 supposed to be following. And I think that was part of what happened in Clarksburg as it  
9 was relayed to us in connection with the permit review process and that you have one  
10 guy down there who's been doing hard work for 20 years or whatever it's been, but the  
11 question is is that a process that creates the checks and balances. And I think the  
12 answer is it isn't and now I think they've already implemented a reform around that area.  
13 Let me just touch on a couple other things. I think you're absolutely on target about the  
14 issue of interrelated issues. I, quite frankly, don't know how the Board can bring to us its  
15 recommendations on the Annual Growth Policy on one day saying that we need to slow  
16 down the pace of growth and on the other hand come in and talk about the need for  
17 affordable and workforce housing. I don't think they are disconnected but we don't tend  
18 to have those discussions at the same time. You highlighted the TDR -- I mean the Ag  
19 Reserve issue I think we've all got a million examples of where there could be a better  
20 discussion or a broader discussion of what our policy initiatives are when we deal with  
21 individual recommendations of the Board. Finally on this piece in terms of our  
22 interaction with the establishment of priorities, I guess I would disagree with your  
23 characterization that there's no disciplined system through which either the Council or  
24 Board establishes priorities. We've had these semi-annual meetings and at each and  
25 every one of these meetings, that's an opportunity for Councilmembers to say -- to find  
26 out the status of projects and more importantly to add to the work program of Park and  
27 Planning. And over the years that's exactly what this and previous Councils have done  
28 with regard to the transportation issues, the two-year TPR that the Planning Board did  
29 was at the direction of the Council. The recommendations that have come over in  
30 connection with the Ag Reserve, they're looking at C-2 zoning, revitalizing shopping  
31 centers was again a discussion that we had with the Planning Board about priorities and  
32 their decision to turn Melissa Bannock and her S.W.A.T. team loose on affordable  
33 housing after they had finished transportation was absolutely a function of the  
34 interaction between the Board and the Council. And while I would say the semi-annual  
35 meetings are a lot of form and not that much substance, they do provide an opportunity  
36 for all nine of us and anybody else that wants us to get something on the plate of the  
37 Planning Board to have that discussion. I just wanted to ask a couple of questions  
38 specifically relating to recommendations on the site plan amendment process going  
39 through the consent calendar. I had raised this in July, the Planning Board had rejected  
40 it, and the compromise that was worked out was that the site -- that site plan  
41 amendments would get reviewed by the staff director -- signed off by the staff director  
42 after public notice which is what I was looking for. The concern that's been raised -- and  
43 I hope you'll raise this, Derick, next week in discussion -- the concern that's been raised  
44 about having site plan amendments reviewed by the Planning Board itself is that those  
45 are, as it's been explained to me, appealable as are any decisions of the Planning



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1 Board and the question that needs to be more thoroughly discussed, we can discuss it  
2 with the PHED committee certainly, but with the chair and staff, is whether you could  
3 have a situation where a minor -- a truly minor amendment -- we've decided to move a  
4 bank of trees from here to here, is then, therefore, appealable and whether or not that in  
5 effect stops the process from moving forward over what most people would concede  
6 would be hardly something that rises to the level of Clarksburg. Had you given any  
7 thought along those lines?

8  
9 Dr. Royce Hanson,

10 I have to say I haven't thought deeply about that particular issue. But it seems to me  
11 that this can be handled either through the way in which the Planning Board writes the  
12 conditions that are placed on the site plan. The issue that I'm concerned with is that I  
13 have extreme difficulty sorting out what's minor and what's major in this -- in these  
14 matters. You know, 2% of half-acre may not be very much, 2% of 500 acres is a lot of  
15 stuff. So, I think, in effect, amendments to the site plan are it seems to me amendments  
16 to the kind of conditions that have been established by the Planning Board in its action.  
17 I've said that drawing itself is ministerial and that seems to me to be the case. But as I --  
18 and there may be a better way of dealing with this, but to avoid the problem of making a  
19 staff member responsible for what could be a major or a significant change, as opposed  
20 to making the Board responsible for it, it seems to me the Board is the place to place  
21 the responsibility.

22  
23 Councilmember Silverman,

24 Okay. Well, I look forward to that. Finally in connection with your comments about  
25 subpoena power and the hearing examiner, would it be your understanding that if  
26 there's a hearing examiner process for enforcement cases that the hearing examiner  
27 would have the ability to subpoena witnesses and be under oath?

28  
29 Dr. Royce Hanson,

30 Yes.

31  
32 Councilmember Silverman,

33 Okay, well we'll have opportunity to discuss that, the reason why Delegate Bronrott and  
34 I proposed state legislation really had to do with the issue of the fairness of all sides of  
35 the process in an enforcement action. I don't know how you work without -- and have an  
36 enforcement process where theoretically somebody could be asking for millions of  
37 dollars of fines to be imposed without making sure that folks are at the table. I  
38 understand in the particular case in Clarksburg, unless the person had immunity that  
39 might have been fruitless but I think that's a unique situation there.

40  
41 Dr. Royce Hanson,

42 It seemed to me that the hearing examiner in an enforcement case where you're dealing  
43 with a violation has plenty of power. If you use the zoning hearing examiner. I don't  
44 expect there's going to be enough cases of this for the Planning Board to have its own  
45 hearing examiner. There isn't any reason why the zoning hearing examiner couldn't





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1 hear these cases, they have the authority to compel the production of documents and  
2 witness, and...

3  
4 Council President Leventhal,  
5 Could I just get confirmation from the County Attorney? Does our Office of Zoning and  
6 Administrative Hearings have subpoena power now?

7  
8 Dr. Royce Hanson,  
9 I believe they do.

10  
11 Councilmember Silverman,  
12 And the ability to compel testimony under oath?

13  
14 Dr. Royce Hanson,  
15 Subject to privileges, of course.

16  
17 Councilmember Silverman,  
18 Well, of course, right, but the basic...

19  
20 Dr. Royce Hanson,  
21 The reason I really think subpoena power is really a bad idea for the Planning Board to  
22 have for subdivision or site plan hearings or things like that, is that I think rather than  
23 expediting decision-making it'll complicate it. And I think most of the people who come  
24 to appear before the Planning Board come as individual citizens. They don't have  
25 attorneys to advise them. And I can foresee situations in which testimony would be  
26 chilled from ordinary folks if they were fearful that somebody was going to ask that...

27  
28 Councilmember Silverman,  
29 Sure, well, the only...

30  
31 Derick Berlage,  
32 The Board essentially agrees with that.

33  
34 Councilmember Silverman,  
35 Well, the only suggestion -- The only suggestions that's been made and what Delegate  
36 Bronrott's legislation has to do uniquely and solely with enforcement action, not broad  
37 subpoena power for the Planning Board on site plans, or site plan amendments. This  
38 has to do with the enforcement case, where you're acting in a quasi-judicial manner, if  
39 we end up with a hearing examiner process that would take it off the table. I have one  
40 final question which I didn't see in here but I've actually asked your attorney, Adrian  
41 Gardner, to take a look at which is there don't appear to be a mechanism right now --  
42 and I'm asking your counsel to come back to us shortly with an answer -- as to whether  
43 there is a private right of action for someone to bring if the Planning Board chooses not  
44 to enforce a complaint that is made? One of the things, again, to the extent that you're a  
45 separate independent agency, I don't have any belief that we have the right to call you



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1 up and say you have to have an enforcement hearing on case XYZ, and my  
2 understanding the process is right now is a person files a complaint, says the developer  
3 didn't do A, B, and C. Your staff takes a look at it and your staff acts essentially as the  
4 State's Attorney, for lack of a better term, and decides whether the case has merit. If it  
5 does, then the staff is in effect the State's Attorney and you are the jury. What happens  
6 when the decision made by staff is to choose not to proceed? And I didn't see anything  
7 in here, Royce, about that, issue. It will continue to be raised as the Planning Board  
8 goes through its process.

9  
10 Dr. Royce Hanson,

11 The way I've dealt with that here is if there is a -- let's say a complaint comes in of a  
12 violation, comes into the Chairman's office or wherever, that that complaint should be  
13 investigated by staff. The staff should write a statement of whether or not they find that  
14 the complaint has merit or does not have merit. Assuming they find that the complaint  
15 has merit, then they would deal with it in terms of making a recommendation to the  
16 Board. If the alleged violator disagrees either with the facts, or with the proposed  
17 remedy, then that can be referred to the hearing examiner. Now, if the -- so that the  
18 adversaries are essentially the Board and the alleged violator. If the staff comes back  
19 and says, no, we don't think there's a violation here and here's why we don't think there  
20 was a violation, the complainant says, no, yes, I think there was a violation, then it  
21 seems to me again could refer that to the hearing examiner. The complainant would  
22 have a standing as one of the parties in that dispute before the hearing examiner. The  
23 other thing is standing in cases that come before the Planning Board, not quite as broad  
24 as Justice Douglas once suggested that bears and rocks should have standing, but  
25 almost everything else has standing when -- if you've appeared in the case.

26  
27 Councilmember Silverman,

28 I'll just close that by saying I'd like to explore that further in Committee and in Council  
29 because, quite frankly, if, I mean, the process up-to-date has been the Planning Board  
30 ultimately decides what it wants to do with enforcement cases, and the question,  
31 frankly, is what happens if you choose not to do that. If there's a violation of a zoning  
32 ordinance, and DPS -- alleged violation -- DPS chooses not to do it, my understanding  
33 is that there is -- Marc, tell me -- there is a private right of action in that type of situation.

34  
35 Marc Hansen,

36 Well, the complainant can go to the Board of Appeals and challenge the DPS's decision  
37 not to take action.

38  
39 Councilmember Silverman,

40 Right, and so I think we need to make sure, with all due respect to the Planning Board  
41 or the hearing examiner that there is the ability so we are telling in effect what we are  
42 right now which is somebody calls up and complains to us and says "Why isn't Planning  
43 Board enforcing X, Y, and Z?" Well, the answer right now appears to be that's solely  
44 within the discretion of the Planning Board so what do I tell a constituent is their  
45 remedy? If there's an alleged violation of the consumer protection statute in



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1 Montgomery County you have a private right of action, even if the Office of Consumer  
2 Affairs doesn't take action, you can bring suit against another party and I want to find a  
3 remedy for those situations and I look forward to Adrian getting back with us and the  
4 Planning Board with some kind of options on an expedited basis. Thank you for your  
5 indulgence, Mr. President.

6  
7 Council President Leventhal,  
8 Thank you Mr. Chairman, that was a 20 minute exchange, we have five lights. We don't  
9 have a hundred minutes to devote to this topic. I'm going to ask for consent that  
10 Councilmembers now and be -- exercise self-restraint, but also that we have five  
11 minutes each for the following Councilmembers in order Vice-President Praisner, Ms.  
12 Floreen, Mr. Perez...

13  
14 Councilmember Silverman,  
15 I didn't mean to take everybody's time, I apologize.

16  
17 Council President Leventhal,  
18 ...Mr. Andrews, Mr. Knapp and Mr. Denis, and then we can do a second round after  
19 each Councilmembers has had their five minutes. Is that agreeable, Is there objection?  
20 Okay, and hearing no objections, Vice-President Praisner.

21  
22 Councilmember Praisner,  
23 Start the clock. Thank you very much for not just giving us the specificity on zoning  
24 ordinances and suggestions, but also for highlighting for us the bigger issues that we  
25 need to keep in mind from a standpoint of being careful that we focus both on the forest  
26 and the trees to some extent. The thing I'm most interested in are some of your  
27 suggestions in the broader sense, because I think we can get very tied up in the  
28 systemic kinds of issues and not look -- "systemic" meaning process and zoning  
29 ordinance corrections and rules of procedure, et cetera, and not look at the bigger  
30 issues of how we connect planning and implementation in this County. I'd like staff to go  
31 back and review and give me and the Council the history of Planning Board member's  
32 participation in the master plan process, because clearly that's the second time I've  
33 heard the suggestion the Planning Board members manage the planning process and  
34 that's not been my experience in all of the years that I've been involved as a community  
35 member or as a decision-maker. And the question I'd like you to think about is the issue  
36 that the community has concern about is there's one thing about participation. There's  
37 another thing about ownership. Ownership to explain is one thing. Ownership that  
38 automatically locks you in in a position prior to having the full conversation at the table  
39 and taking one of the decision-makers, so to speak, out of the process of saying I'm  
40 hearing this and I want to look this through, as opposed to responsibility for carrying the  
41 plan forward is an issue that I can see the community raising some concerns about. And  
42 it seems to me there are options beyond a Planning Board member owning or chairing  
43 the process including those that have related to Concordia and others that might  
44 provide that kind of balance input, observation, ownership and yet allowing the staff to  
45 do their thing, and mediate the concerns that you hear from the community and from a



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1 property owner or a potential property owner. So I hope that we will look at that issue.  
2 Your comment about what might be eligible in a zone and, therefore, might be a modest  
3 modification ignores to some extent where the master plan might limit what the zone  
4 says, and that ties to me back the bigger issue that I think we continue to have a  
5 problem with is one of the two problems. When we get a master plan, we get a master  
6 plan lately and we seem to get a brand new zone at the same time. The more complex  
7 the zones, the more responsibility beyond the master plan to implement the vision of the  
8 master plan and also know what the zone -- what the problems in the zone may be,  
9 which get -- and that's the complexity I see. Which gets to the second problem, which is  
10 empowering staff to come forward and highlight for us the challenge in the new zones  
11 that they are creating and the challenge when they see a problem in the  
12 implementation, And that, whether you call it a morale issue right now or an issue that's  
13 broader than that, and I happen to think it's broader than that...

14  
15 Dr. Royce Hanson,  
16 I do too.

17  
18 Councilmember Praisner,  
19 ...it extends across the street, it extends further up Hungerford Drive. We are in some  
20 way not encouraging folks to come forward or to think more broadly about what they're  
21 seeing and to own the implementation and to own and identify when they see a problem  
22 and to point it out to us.

23  
24 Dr. Royce Hanson,  
25 I think that when -- a master plan certainly does constrain subdivision. In fact, the  
26 master plan governs subdivision far more than the zone does. The subdivision has to  
27 conform to the zone but it has to be substantially consistent with the master plan. So a  
28 master plan can limit what you can do within any particular zoning classification. The  
29 key thing it seems to me here is that it goes back to the issue of the complexity of the  
30 zoning ordinance as it stands now. One of the reasons that I'm recommending that you  
31 support a revision of the zoning ordinance is because it has now been layered with so  
32 many little ticks to deal with a particular situation that it is hard to follow. I think it is hard  
33 for interpret. I get this complaint from builders. I get it from citizens, from others. So  
34 doing that is one aspect of it. Taking care in the -- and having then a set of revised and  
35 updated zones that can carry out the planning objectives of the County is a key thing.  
36 So that you don't really have to invent a new zone every time that you deal with a  
37 different situation. As we begin more and more to deal with infill development and with  
38 revitalization of older communities and things of that nature, you know, that's going to  
39 be a very sensitive set of issues that have to be dealt with. And my recommendation  
40 and the other aspect that you've raised, my recommendation with regard to the  
41 engagement of Planning Board members is not that they essentially direct the outcome  
42 of this planning process, but that they essentially chair that process to the point at which  
43 something is ready to come to the Board for work session. But so that there is a  
44 member of the Board who can help his or her colleagues understand why they're getting  
45 the kind of comments that they're getting and what the prior discussion has involved.



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1 That requires a certain amount of self-restraint on the part of board members. But there  
2 -- we've got very highly qualified board members and have had been very fortunate over  
3 the years in having extraordinary people being able to serve on the Planning Board so I  
4 think they're grown-ups can handle this kind of situation.

5  
6 Councilmember Praisner,  
7 I think we need to, if I may, work through and talk through that. But from a standpoint,  
8 Council or Councilmembers have tried on a variety of occasions to say that the zoning  
9 ordinance needs to be rewritten and, in fact, tasked Planning Board staff on that and  
10 we've had a variety of reasons why that hasn't happened. I'm not sure a task force --  
11 task force could review the work, be but I really think we have to hire somebody to start  
12 the process.

13  
14 Dr. Royce Hanson,  
15 When I say a task force, I would assume that you would provide for adequate staff for it.

16  
17 Councilmember Praisner,  
18 Responsible for the rewrite...

19  
20 Dr. Royce Hanson,  
21 The reason you need the task force is because you do need the perspectives of the  
22 different communities of interests in the way in which the zoning ordinance works.

23  
24 Councilmember Praisner,  
25 That may be true, but what I'm concerned about is how much longer that will take when  
26 you go through creating another committee as opposed to having someone have the  
27 responsibility and then have the input from those folks as opposed to creating a task  
28 force that would then bring us -- and maybe we're talking about the same thing with just  
29 a different kind of title. The whole issue though it still gets back to me of folks having  
30 ownership and encouragement from this side, the Planning Board and others to  
31 encourage that kind of forthcoming on the part of staff when they see an issue and  
32 when they think about that issue to bring the problem and the suggestion up or across,  
33 however, you might describe it, in order to make sure it doesn't fester and doesn't  
34 become more acute. Because I agree with Mr. Silverman from a standpoint of making  
35 assumptions, at some point at this place, this table, it's one of assuming that folks -- you  
36 have to have some assumption -- with accountability obviously -- but some assumption  
37 that is folks are doing their job and have some sense of pride and responsibility in  
38 identifying issues when they come forward. I'll stop.

39  
40 Council President Leventhal,  
41 Okay.

42  
43 Derick Berlage,  
44 I know I need to keep all my response for the next session but one point the Board  
45 would insist I make and that is that the Planning Board members and Chairman are



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1 intensely involved in each master plan. Indeed, we are involved with every major issue  
2 that comes to the Board, including our response to Clarksburg. One can disagree over  
3 process, over the precise response, but there is strong engagement by the Chairman  
4 and every Board member in the issues we're talking about. This is a very active hands-  
5 on Board.

6  
7 Council President Leventhal,

8 Okay. I'm going to suggest, number one, that we not take up the sign ordinance this  
9 morning. Let's put that off. Number two, I would really like to conclude this item by 11:20  
10 and I really would like now -- because the Council has already acted on this -- to ask the  
11 clerk to have a five minute time limit for Councilmembers' comments the five minutes  
12 would not apply to Dr. Hanson's comments. Ms. Floreen.

13  
14 Councilmember Floreen,

15 Thank you. Royce, I have to say, I want to say thank you. I do think that you are  
16 probably the only person in this County who can tell -- sit us all down and tell us what  
17 we need to hear. You are the only person who brings to this conversation really a  
18 perspective that's outside of the political process, than it's focused based on a step back  
19 from -- I don't know how long it's been, 20 years that you have not been actively  
20 engaged in Montgomery County?

21  
22 Dr. Royce Hanson,  
23 23.

24  
25 Councilmember Floreen,

26 23 years.. And I consider you really one of the fathers of the process, the planning  
27 process as we have -- currently have in place because of your long engagement and  
28 leadership. You've really laid out a huge work program for the Council and the Planning  
29 Board. And I'm hoping that you're going to be around to work with us, in the PHED  
30 committee in particular, as we focus on the details of implementation. I'm not going to  
31 talk today about -- talk with you today about the details of what you're proposing. We've  
32 all just had a short time to react. But I do have a basic question. I think on your memo  
33 number two, you're saying -- telling us that the basic problem that we've been grappling  
34 with for the past six months or so -- I think, you say it's a sustained lack of institutional  
35 and intellectual leadership of the planning system.

36  
37 Dr. Royce Hanson,  
38 That's right.

39  
40 Councilmember Floreen,

41 That's what you're telling us. And does that go basically to your comments on the  
42 legislation? I mean, what I'm hearing in this exchange, and reading between the lines  
43 and on the lines of your two memos to us is comments about operations, practices,  
44 leadership relationships, organizational structure, routines, traditions that have evolved



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1 over time at Park and Planning. And what I think I'm hearing from you is very little  
2 support for making legislative changes.

3  
4 Dr. Royce Hanson,  
5 That's correct.

6  
7 Councilmember Floreen,  
8 So what you're telling us, I think, in a nutshell, is that there's nothing -- well, let me put it  
9 another way. Are you telling us that the organizational structure that currently exists  
10 really doesn't need much in the way of legislative tweaks?

11  
12 Dr. Royce Hanson,  
13 I don't think there's a need for very much in the way of legislation. You need legislation  
14 to deal with the fine issue. You need legislation with the ability to assign violation cases  
15 to a hearing examiner. There may be some other small tweaks that may be needed in  
16 the legislation. But for the most part the Planning Board has ample authority to improve  
17 its processes and its hearing procedures and things of that nature and can do it by  
18 administrative rule and it's better to have the Planning Board do it by administrative rule  
19 because nobody's perfect. And it's a lot easier to change an administrative rule and a lot  
20 less embarrassing, frankly, for the Planning Board to make those changes than for you  
21 to have to make those changes after you thought you'd fixed it in a zoning text  
22 amendment and then you find something that, you just didn't anticipate. But then you've  
23 got to get back on Council agenda and you've got to go through the business of saying,  
24 "Well, you know, we goofed." I think it's a lot easier for the Planning Board to say "This  
25 needs to be tweaked because our experience is showing that we need to make an  
26 adjustment here on the basis of that experience so that the process can work more  
27 smoothly."

28  
29 Councilmember Floreen,  
30 The one issue of referral of certain kinds of hearings to a hearing examiner, I don't know  
31 if that was an option that was ever considered by the Planning Board in this  
32 environment. I don't know if there's anything that would currently preclude that.

33  
34 Dr. Royce Hanson,  
35 Well, the legislation that you had drafted that was before you contained a provision that  
36 simply allowed it, and I'm saying "Don't."

37  
38 Councilmember Floreen,  
39 Well, you're saying it should be permitted.

40  
41 Dr. Royce Hanson,  
42 It should be permitted for violation cases only.

43  
44 Councilmember Floreen,



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1 But, I'm saying, I'm just raising the question of whether it's -- that option is currently  
2 precluded. I mean...

3  
4 Dr. Royce Hanson,  
5 Right now they couldn't do it, no.

6  
7 Councilmember Floreen,  
8 They could not?

9  
10 Dr. Royce Hanson,  
11 No, I don't believe so.

12  
13 Councilmember Floreen,  
14 Do we have --  
15 Dr. Royce Hanson,  
16 They don't have a hearing examiner.

17  
18 Councilmember Floreen,  
19 Well, I know they don't have a hearing examiner.

20  
21 Dr. Royce Hanson,  
22 I suppose it's debatable.

23  
24 Councilmember Floreen,  
25 Well, again -- this is not the time to work through the details of this, but I think -- I think  
26 that these are really important recommendations for us, Royce, and I would like to make  
27 sure that you are going to be -- this is counting Mr. Hanson's time too.

28  
29 Council President Leventhal,  
30 It's not. I asked the clerk- it's only Councilmembers time when Dr. Hanson speaks, his  
31 time does not count.

32  
33 Councilmember Floreen,  
34 Will you be working with the PHED committee on the next steps? Will you be able to  
35 help us on that?

36  
37 Dr. Royce Hanson,  
38 I'll take such time as I can, yes, but...

39  
40 Councilmember Floreen,  
41 I'd like to ask you to do that. And just a final question. Are you saying that we should --  
42 or the Planning Board should recommend a return to the Ag -- Agricultural Master Plan.

43  
44 Dr. Royce Hanson,





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1 I think -- that's a question I think could be considered. There are enough issues involved  
2 there that it may be useful to do so. It may be possible to deal with these issues without  
3 going to amending the master plan. But -- and in general I don't favor opening master  
4 plans if it isn't necessary to do so. On the other hand, there is some value in  
5 reaffirming a plan just as you've done with the general plan over a number of years in  
6 which the general plan has been amended. Of course the Ag Reserve plan is part of the  
7 general plan.

8  
9 Councilmember Floreen,  
10 Okay. Thank you.

11  
12 Council President Leventhal,  
13 Mr. Perez.

14  
15 Councilmember Perez,  
16 Thank you, I know everybody else has thanked you, but I think if there's one thing I've  
17 learned this morning is I think the most important thing you've said is that it's important  
18 not to adopt a "ready, fire, aim" approach to addressing these challenges and it's  
19 equally important not to put forward a sea of legislation when a sea of legislation is not  
20 called for. And we're going to have a public hearing tonight. I was concerned back in the  
21 fall when a lot of the proposals were coming out that -- I was -- I certainly don't doubt the  
22 sincerity of everybody who introduced them, but I simply had concerns on the merits  
23 about whether they were in the public interest and I am hearing you today vindicating a  
24 lot of the concerns I know I had about whether the legislation that was out there was  
25 actually going to move the needle forward. And so I'm glad we have taken a more  
26 deliberate approach to the legislation to put it off and are now considering it now and I  
27 think what I'm hearing you say is that is going to be in the public interest and so I'm  
28 appreciative of that. And I suspect what you're going to hear, as any expert or  
29 consultant that comes in, you agree with them on some things and disagree on with  
30 them on others and do I want to thank you for putting forth your ideas in a clear manner,  
31 and I do agree with a number of things your saying. One thing that I would ask you to  
32 continue to do which is implicitly what you've done here today, is the Hippocratic Oath is  
33 sometimes called "The Doctrine of Unintended Consequences." And as we move  
34 forward with a number of initiatives, I hope that at every turn you -- and you're in a  
35 unique position to do it, because I don't have your knowledge, you will continue to ask  
36 the question "What are the intended and unintended consequences of what we're  
37 proposing to do and are those consequences things that actually do more harm than  
38 good?" And I think you've done that in the context of every piece of legislation. I see that  
39 as a critical role that you can play in the months ahead. Chairman Berlage, one thing  
40 that surprised me in what I read here, is I thought it was clear that we were going to  
41 separate Director of Parks and Director of Planning. And if I understand this correctly,  
42 you're now advertising for a Director of Park and Planning. And did I get it wrong that it  
43 wasn't going to be separated out? What is the situation with that?

44  
45 Derick Berlage,



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1 To be quite honest, the Board is reserving its options and in this situation we think that  
2 makes the most sense. We are within a month or less of selecting a new  
3 Superintendent of Parks, a position which under the old structure responded --  
4 answered to the Director of Park and Planning. And we are in the beginning of the  
5 process of recruiting a Director of Park and Planning as that position has previously  
6 been known. Based on the candidates we receive and the candidates we select, the  
7 Board reserves to itself the opportunity to decide whether it would make the most  
8 sense, both based on what we've learned about the structure and in terms of the  
9 candidates that we have before us, whether the -- what's clear is the Director of  
10 Planning will respond directly to the Board. The question is whether the Superintendent  
11 of Parks should respond directly to the Board as they did in the past, or whether they  
12 should answer through a Director of Park and Planning? That is a decision that the  
13 Board is in the process of working through, but we have the time to make that decision  
14 because the search process is going to take a number of months and certainly we  
15 welcome Dr. Hanson's input on it as well as yours.

16  
17 Councilmember Perez,  
18 Well, my input on it, I guess, would be...

19  
20 Derick Berlage,  
21 We have not made a final decision, no sir.

22  
23 Councilmember Perez,  
24 I have asked the question a number of times of a number of people, why did it get  
25 consolidated. I still haven't heard an answer that makes real sense to me. The  
26 challenges in the Park System, judging from the mail that I get, are significant. The  
27 challenges in the Planning context, we've been debating for the last year or whatever,  
28 and so it certainly seems to me that the case has been made rather compellingly that  
29 we need to separate it out. You asked for my input 20 seconds ago and I'm giving it to  
30 you.

31  
32 Derick Berlage,  
33 We appreciate it. I would also point out however that Article 28 actually specifies that  
34 there is a Director of Park and Planning, and that's the only position listed in Article 28  
35 that answers directly to the Board.

36  
37 Councilmember Perez,  
38 If we need to do something to address that, we can do that. I'm less concerned with  
39 what the Articles say than what's in the best interest of the organization and I have not  
40 yet heard the case made for continuing to have one person doing two jobs that are just  
41 different in so many different ways that you obviously appreciate. I guess one area,  
42 Royce, where I respectfully disagree with you, I think one thing the Council has done  
43 well is not rush to judgment on the legislation. We've taken a more deliberate approach  
44 and I think your memo indicates the prudence of taking that deliberate approach and not  
45 acting quickly. I would respectfully disagree that the Council needs to decide quickly



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1 whether it intends to reappoint the Planning Chair. As we have said many times, Derick  
2 Berlage didn't create the problems that we have here -- and you say this in your memo  
3 itself. He and his colleagues on the Planning Board and my colleagues and I are all  
4 accountable for fixing the challenges, and just as we were prudent in not acting quickly  
5 then, I think we're giving the Chair and his colleagues the chance to correct the  
6 problems now. And I again think that's going to prove to be the prudent course of action.  
7 And we're not talking about three years from now, we're talking about five months from  
8 now, and they have been focused on this and I think we're all going to judge -- and  
9 Chairman Berlage is well aware that we're going to judge him in large measure by how  
10 you respond to this set of challenges. And so I actually think that the ordinary timeline  
11 that we're on which is not a long time line is, in fact, the prudent time line which gives  
12 Chairman Berlage a chance and gives us a chance to address and assess what is  
13 going on.

14  
15 Council President Leventhal,  
16 I'm going to suggest that that doesn't require a response and if that's then end...

17  
18 Dr. Royce Hanson,  
19 I hadn't intended one.

20  
21 Council President Leventhal,  
22 We'll move to Mr. Andrews.

23  
24 Councilmember Andrews,  
25 Thank you. Well, Royce, I think you provide an extraordinary public service by your  
26 volunteering your time to consult in this way, you joked that we're getting what we you  
27 paid for and I wanted make sure that people understood that you were actually doing  
28 this as a volunteer, you're a real service to your County, and thank you for doing that.  
29 Your qualifications as it's been mentioned are extraordinary for doing this analysis and I  
30 agree with much of it. I think the comment that -- the recommendation that all  
31 amendments, major or minor, should be subject to public comment and approved by the  
32 Planning Board is very important. I think as Justice Brandeis once said, "Sunshine is the  
33 best disinfectant," and I think some of the problems that contributed to the mess in  
34 Clarksburg were a result of the nonpublic adoption of amendments by -- at the Planning  
35 Board. So I think that contributed to it. I do want to ask you to comment about a  
36 statement in the report, in your second memo actually that's on page 2. And the  
37 paragraph says that the basic cause of the morale crisis is a sense among key staff that  
38 their professional integrity has been compromised and is not valued by the Board and  
39 Council. This is at the bottom of page 2 of today's memo. There is a serious danger that  
40 some of the best and most committed staff members will leave the agency, some have  
41 already done so. The Clarksburg situation has exacerbated morale problems by a  
42 persuasive feeling that it was produced by pressure to expedite development projects  
43 with inadequate staff and quality control. And I want to ask you what -- where do people  
44 at the Board feel that that pressure came from?



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1 Dr. Royce Hanson,  
2 I don't know that there's a specific -- that anybody identified for me a specific source. It  
3 was more a general sense that they had that they were expected to move projects  
4 through expeditiously and to get stuff built. Now, whether that is -- you know, I'm  
5 reporting here a perception, and the extent to which there were specific sources, I have  
6 no idea. And it may be that their perception is mistaken, but it appeared to me from two  
7 days of interviews that I conducted with staff that there was -- there were strong feelings  
8 in that direction.

9  
10 Councilmember Andrews,  
11 Was your sense that people felt that this was something that was longstanding at the  
12 Planning Board or was this something that had come more recently?

13  
14 Dr. Royce Hanson,  
15 I didn't get at that.

16  
17 Councilmember Andrews,  
18 You didn't get the sense that it was a longstanding...

19  
20 Dr. Royce Hanson,  
21 I -- well, I got the sense that it was in the last several years, but where, you know, where  
22 it started, I have no judgment.

23  
24 Councilmember Andrews,  
25 Okay.

26  
27 Dr. Royce Hanson,  
28 Or no basis for making a judgment.

29  
30 Councilmember Andrews,  
31 Okay. All right. That's it. Thank you.

32  
33 Councilmember Praisner,  
34 Mr. Knapp.

35  
36 Councilmember Knapp,  
37 Thank you, Madam Chair. Thank you, Mr. Hanson, for your service. Royce, you've been  
38 a tremendous asset to all of us and I know I've had the opportunity to learn from you  
39 and some days we agree and some days we don't but at any point in time you've  
40 always been a tremendous asset and very willing to share and this is just one more  
41 example of that and thank you. I guess what I'm struck by as I read through and I have  
42 a lot of specific questions I guess we'll delve into more as we go forward, is the notion --  
43 is your first element in today's discussion which is the Clarksburg crisis is a symptom of  
44 serious systemic problems, and it seems to me that's the key that we've got to address  
45 first, and from there you then talk about some of the management issues and then



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1 morale issues and I guess the Council President referenced this a little bit in his  
2 remarks that there has been a notion that we take a more hands-off approach and I  
3 guess I've struggled with that in my time up here. And it seems to me and that's  
4 somewhat of a flawed premise that we shouldn't assume that necessarily things are --  
5 take for granted that things are going as they are. That it's our job as a Council to ask  
6 those questions and not to ask those questions in an environment that says "Gotcha,"  
7 but to ask those questions in a way to reinforce the positive and ask questions, and find  
8 things that aren't working as well. And I think the place that we do that really is in our  
9 addressing of the budget where a number of us have been working, I think, over the  
10 course of the last couple of years to come up to ways to more zero-based budgeting or  
11 identify outcomes measure so we can assess how things are working and how things  
12 aren't working because unfortunately what I think we've turned this into now is, as you  
13 ask a question I think you made a very good point about the notion of reaffirming a  
14 commitment to the Planning Board Chair or not, but making some decision sooner  
15 rather than later. And I think that's important because I think what we need to do is  
16 really go back and refine and establish kind of the roles and responsibilities and  
17 expectations from our perspective, from what we are expecting from the Council, what  
18 are we expecting from the Planning Board Chair, what are we expecting from the  
19 Planning Board, and that works its way down from a management perspective all the  
20 way down to what the staff members expected -- what's expected of them, what role do  
21 they play and to ultimately get to a point where it's not a culture of "Gotcha," it's not a  
22 culture where people are less inclined to bring issues forward or mistakes but that  
23 people are focused on the fact that what we're trying to create is the best community we  
24 possibly can, and in order to do that not everything is going to happen perfectly all the  
25 time but that people are willing to raise those questions to say "Wait, here's an issue we  
26 need to bring the people together to address this issue and to ultimately get to a positive  
27 outcome" whatever that outcome may be. But people need to recognize it as their  
28 responsibilities to raise those issues, and they're not slapped down for raising them, but  
29 they're encouraged to do it to get to a successful outcome which is a great community.  
30 And so I think we've really got to take a strong forward -- we as the Council in the very  
31 near term to say, "what are the premises you know which we're working?" If I've heard  
32 what you've said, things have kind of eroded over some period of time. I don't know if  
33 that's 10 years, 15 years, but you reference the notion the Planning Board members  
34 served as chairs of advisory committees and there was an expectation, I don't know if  
35 that was because of the people in the job or because that was the expectations that  
36 Council had had for those people. But that clearly that expectation existed somehow. So  
37 how do we reorient that? And the way to do that I think is for us to step up and try to  
38 redefine what we think those roles are. And I don't know what the parameters were that  
39 the Council discussed when Mr. Berlage was appointed as chair? Are they the right  
40 parameters? Did we ask the right questions? I don't know, that's not a reflection on Mr.  
41 Berlage, that's more of a reflection on what decisions the Council was making, and what  
42 pieces they were trying to look at to make the decision. If we assumed things were  
43 working and we identified a person on that basis, and things really weren't working we  
44 just didn't know that yet, we need to better understand that and then step back and say  
45 what is it that we're trying to achieve? And Mr. Berlage may be the exactly the right



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1 person to do it once we do that assessment, or we need to do something completely  
2 different, but we need to figure out what those parameters are first, and I think that's our  
3 job up here on the Council as owners to not necessarily sit for too long and try to see a  
4 lot of other changes being made because those other changes are responding to things  
5 that probably are more symptomatic of the broader, I think, systemic issues that we  
6 need to address. So I think we need to do that. The one question I would raise to you,  
7 Royce, is you reference how things had once worked and there's a time you look back  
8 nostalgically and say things were better then. Perhaps they were or weren't, but it  
9 sounded as though at least expectations were different. So, the question is during that  
10 time when you were aware that there were different expectations, is that something  
11 where pieces were written down, that this was documented that there was processes in  
12 place that were different, or is that an expectation that the Council or the Planning  
13 Board Chair or whomever had in that yielded certain outcomes?

14  
15 Dr. Royce Hanson,

16 There was nothing written down that I know of. These were matters of practice that  
17 were developed between board members and between Board and Council.

18  
19 Councilmember Knapp,

20 And so at some point just this practice had gone away. Again it gets back, I guess, to  
21 the notion then of expectations of the Council?

22  
23 Dr. Royce Hanson,

24 I don't raise these for any sense of nostalgia. I've been around long enough to know that  
25 people remember things often better than they were and I don't want to get into that  
26 situation. What I'm trying to think about is okay, what works going forward from here that  
27 will improve the quality of work that is able to be performed by the Board and Council as  
28 it deals with its joint responsibility for the County? I've said it here in one point and I've  
29 said several times that in a sense the Planning Board is the trustee of the future of this  
30 County. And, therefore, it needs to be organized, led, and act as such. So that the  
31 emphasis that I place on quality control is essentially one that says it's the Planning  
32 Director particularly has the unique responsibility of maintaining the professional quality  
33 of the products that are produced. So whether you had the world's most perfect process  
34 or not, that's not a substitute for substantive quality. One of the people I interviewed said  
35 the problem was that there had, over time, been a substitution of process for substance.  
36 I'm not sure that's correct. But at any rate, that's a trap one wants to avoid, that you  
37 don't process it down to the gnat's eyebrow and still mess up, because you haven't  
38 worked with the mentoring of staff, with the training of staff, with the vetting of things  
39 that come before the Board with essentially a murder board that forces everyone to be  
40 able to defend what they're bringing forward.

41  
42 Derick Berlage,

43 Quality is the prime directive, no question.

44  
45 Council President Leventhal,



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1 Okay. Thank you, Mr. Knapp. Mr. Denis, you get the last five minutes.

2  
3 Councilmember Denis,

4 Thank you, Mr. President, and thank you, Dr. Hanson, for your life's work and for in this  
5 instance being willing to serve as what we used to call a "Dollar a Year Man," or I think  
6 getting less than a dollar in this case, for your excellent recommendations and your  
7 Herman Wouk reference. The County Executive has issued a proclamation by which  
8 we are to celebrate this week as Accounting Awareness Week all week long, and I think  
9 that is appropriate for this item before the Council as well as the next. I noticed in  
10 Marlene Michaelson's packet for this budget item that there is a reference to the  
11 Inspector General and the investigation that is ongoing, as well as one by the Special  
12 Prosecutor, and also that we have a letter -- the Council has a letter from the Inspector  
13 General dated this January 12th, in which the Inspector General refers to "independent  
14 audits" and what he feels the lack thereof and the need for independent audits. And it  
15 goes on the next page of the memo to talk about the complex laws dealing with his own  
16 authority. So I guess my question is it seems to me that the Inspector General should  
17 have the tools to do the job and that maybe this instance has revealed shortcomings in  
18 our own law and possibly state law that need to be rectified, but I'd be interested in your  
19 view of that issue. Should we have independent audits -- more independent audits?  
20 Why aren't there independent audits and should the Inspector General be given the  
21 authority that he requests?

22  
23 Dr. Royce Hanson,

24 Well, I believe you have under the Charter the authority to do independent audits. Now  
25 whether -- I don't recall that there's an audit provision in the Regional District Act, but I  
26 can't imagine that if you asked for an audit of the Planning Board that it would decline to  
27 participate.

28  
29 Derick Berlage,

30 Let me just be very clear, we do subject ourselves to independent audits frequently in  
31 financial matters and other matters. The Inspector General's memo goes to how many  
32 audits, who does the audits, what do the audits look at, but we are audited very  
33 frequently.

34  
35 Councilmember Denis,

36 Well, on page three of the IG's memo he states that independent audits of land  
37 development activities have not been conducted to ensure adequate management  
38 control is in place. And on the next page he talks about differences between State and  
39 County law, so are you saying that you don't believe that we need any additional  
40 legislation to have the independent audits that are called for by the Inspector General?

41  
42 Derick Berlage,

43 The land development audit which I understand to be essentially a performance audit of  
44 the Development Review Division, he's absolutely right, that has not been done for  
45 many years and indeed should have been done, and might have detected some of the



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1 problems that we had. But it could have been done. But the issue is, your question is do  
2 we need new authority, I'm not going to comment on that today. But I just wanted the  
3 record to be clear that we are subjected to audits, we have an outside auditing firm . We  
4 have audits from the State of Maryland, as well as others.

5  
6 Dr. Royce Hanson,

7 As far as performance audit is concerned, it would be my view that you have ample  
8 authority under the Charter to have performance audits done, as distinguished from  
9 financial audits. And because you are the Regional District Council, I can't see any  
10 reason why you couldn't request that that be done for the Planning Board too, just as  
11 you can for an executive agency under the Charter. And these can be extremely helpful  
12 -- sometimes they're tough -- but they can be extremely helpful to management to have  
13 performance audits done. Sort of thing that GAO does all the time in the federal  
14 government.

15  
16 Councilmember Denis,

17 It seems to be to me it's something that should be done.

18  
19 Council President Leventhal,

20 Well, I see Ms. Praisner has another question. Mr. Denis' very timely question reminds  
21 me that with -- we hadn't scheduled conversation of the Inspector General's memo, but  
22 since Mr. Denis has brought it up, I've said before and I will say here now that any  
23 agency that believes -- well, first of all it's my understanding that the Planning Board has  
24 been cooperating with the Inspector General and responding to his request, so I take  
25 that as that's been offered, and I believe it because I've been told it. So Tom Dagley's  
26 memo about whether he has adequate authority to look into agencies that many believe  
27 are County agencies, regardless of whether they are creatures of state law or County  
28 law, puts us in the position with respect to the Inspector General of their -- you can  
29 define one's responsibilities in the most narrow statutory way or you can look at one's  
30 responsibilities in terms of what is good public policy and what is good public relations,  
31 and any agency -- any agency that believes it need not participate fully in the Inspector  
32 General's efforts -- and I'm not only referring to Park and Planning here, by any means -  
33 - should be prepared to have that conversation with me in public as long as I'm Council  
34 President. So I look forward to that conversation with any agency, and I'm not only  
35 referring to Park and Planning. If there's any agency that believes that because of strict  
36 interpretation of state law or that has its lawyers seeking ways not to participate with the  
37 Inspector General, that's a conversation I'm very, very happy to have in public with the  
38 head of any agency.

39  
40 Derick Berlage,

41 We've welcomed all outside audits including the Inspector General's.

42  
43 Council President Leventhal,

44 I'm not talking about Park and Planning right now.





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1 Councilmember Praisner,

2 And I would like as Vice-President of the Council with some experience with other  
3 agencies to join you in any public conversation because as the Chair of the Committee  
4 that has some role in interacting on the Inspector General and having been there when  
5 we created the Inspector General, I think we're going to spend time discussing whether  
6 folks have authority or not rather than focusing on the substance, then that's an  
7 argument, or a discussion I'd like to be a part of. The one question I didn't have a  
8 chance, and I apologize for going beyond, I thought waiting for a whistle that never  
9 came, is the issue of your suggestions, again related to the Planning Board member  
10 role in the development or the discussion on master plans and the way the Planning  
11 Board in recent years has modified significantly the way in which master plans are  
12 developed, and the discussion that we, I guess at some point will have here, we've only  
13 had it in passing on this whole region we should be looking at regional centers,  
14 commercial centers, et cetera, and at what magnitude, it does tie things together and  
15 then gets to the zoning ordinance and those zones. So not for conversation today,  
16 obviously, but it does seem to me that when we talk about the role of the Planning  
17 Board members, we also need to talk about the process they are participating in. And  
18 those master plans have changed dramatically in recent years with less community  
19 input in my view or at least a more modified process that may engender some of the  
20 issues and not encourage the kind of the issues. -- the kind of interactions.

21  
22 Dr. Royce Hanson,

23 That's worth looking at. Also that there are changes in the community and the people  
24 who participate and there's issues of time and things of that nature, but it's worth looking  
25 at those processes because at least it seems to me both in my experience here and  
26 what I've observed in other jurisdictions is that there's a richness that comes out of  
27 public participation in this process that's impossible to capture any other way.

28  
29 Councilmember Praisner,

30 I agree. There's also a richness that comes from feeling as a community member that  
31 you have ownership of the process as well. So you're talking about ownership from a  
32 Planning Board member participation in that interaction and the benefit of understanding  
33 the perspectives, we have on occasion in the past had community members who  
34 participated in the planning -- master plan process sitting at the table during the PHED  
35 Committee discussions and at the Council dialogue without having to be invited or  
36 jumping up when there's an issue. That might also go along a long way towards having  
37 that ownership encouragement, understanding the gestalt and understanding of what's  
38 going on, thank you.

39  
40 Derick Berlage,

41 I would add quickly though that the time several decades ago that's being talked about,  
42 the County's population was a quarter of what it is today, we were demographically very  
43 homogenous, you could put a small group in a room, create a committee, and get  
44 broad-based -- what at the time was broad-based input. I'm not sure that's true any  
45 more.



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Councilmember Praisner,

They're not mutually exclusive and we continue to look at them as one or the other and they're not.

Dr. Royce Hanson,

The County at that time had 600,000 population.

Council President Leventhal,

Mr. Knapp,

Councilmember Knapp,

Just one question, thank you, Mr. President. In your responses each of you had recognized the notion of QA and QC and in particular, Dr. Hanson, the notion of having a great process in place, having all the boxes checked and still having it be wrong at the end. And not necessarily to delve into it today, but I would like to follow-up because this came up in our development review discussion last week is to how to put in place that QA/QC process that isn't a matter of just adding more people whose signatures go in a box or more things that get checked off but actually end up in a really quality checked product at the end of that day. I think that's something for us we're all kind of wrestling with and would love your input on.

Dr. Royce Hanson,

Just very briefly, that is largely a matter of establishing a culture in an organization that demands, expects, and produces those kinds of results. I don't think there's a rule that you can adopt that will produce it.

Council President Leventhal,

Well, very good. Dr. Hanson, we look forward to continued frequent contact with you. We appreciate the time given us and I do mean "given." We're very, very grateful for your input. Our next item is related, it has to do with the reimbursement of certain costs associated with the Clarksburg matter. We are now on Agenda Item 3.1 and the first decision can be made fairly quickly. Once again, I want to thank my predecessor as Council President, Tom Perez, who really got very deeply into trying to bring parties together, trying to find a good outcome for the County and assisted the parties to move to a mediation process which is now just at its earliest stages and we've had of necessity the -- my predecessor as Council President had a number of contacts, and made some assurances and frequently consulted with all of us, and I think just did an excellent job of giving all parties confidence that they had his ear and that we were moving towards some sort of resolution. But in the process of getting to mediation, my predecessor as Council President indicated that he thought it was appropriate for the County Council to fund one-third of the mediator and related expenses and I wanted to get on record I support Tom's suggestion in that regard, but I just think it's important as a full Council we get that on the record first. So, we're on Agenda Item 3.1: Mike Faden's memo the item on mediation costs. The parties to the mediation have agreed



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1 that the developer and the builder will each pay one-third of the cost of Judge Howe and  
2 related expenses, we don't know precisely the amount of these costs. It was the  
3 recommendation of my predecessor that the County fund the remaining one-third of  
4 these costs. We believe that if these costs are within the low end of the estimates that  
5 we've got, that the County Council can go ahead and handle that within our existing FY  
6 '06 budget. If a special appropriation is needed, it will be -- we can so move, but maybe,  
7 Tom, do you want to go ahead and make that motion, and we'll just make that decision.

8  
9 Councilmember Perez,

10 So moved and again related expenses, just to be clear, was the expenses of a planner,  
11 a planner that would assist the mediator, a planner their would assist CTCAC. This is  
12 separate and apart from the issue we're discuss in about 90 seconds. I just wanted to  
13 make sure we're clear when we talk about "and related expenses." Those were the  
14 things that we were discussing at that time.

15  
16 Council President Leventhal,

17 We are not talking about payments right now to the Clarksburg Town Center Advisory  
18 Committee; we're going to talk about that next.

19  
20 Councilmember Perez,  
21 Correct.

22  
23 Council President Leventhal,

24 So we're talking about paying for Judge Howe, paying for...

25  
26 Councilmember Perez,

27 Some planners who will assist, who are assisting CTCAC planners, who may be  
28 assisting Judge Howe in attempting to construct the vision that I'm confident the parties  
29 will come to consensus on in Clarksburg.

30  
31 Council President Leventhal,

32 Okay, so we're not making, we're not moving a special appropriation right now, we're  
33 simply making it clear that the Council -- if we vote for Tom's motion which is subject to  
34 debate right now -- that the Council has made this commitment in open session and has  
35 an official commitment of the County Council. So the motion is made and seconded,  
36 and it is now open to discussion, Ms. Floreen.

37  
38 Councilmember Floreen,

39 Thank you. I have had a lot of questions about the mediation process and I'm a little  
40 unclear about what it is that we would be paying for and the expected results. I read in  
41 Mr. Faden's memo that the point of this is to lead discussions on options for the plan of  
42 completion of the Town Center. Is that the point...

43  
44 Councilmember Perez,  
45 A plan of compliance.



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1 Councilmember Floreen,  
2 Well, I'm reading what the staff memo says. It says "plan of compliance?"

3 Councilmember Perez,  
4 Well, I mean, "completion."

5 Councilmember Praisner,  
6 "Completion."

7 Michael Faden,  
8 It's both.

9 Councilmember Floreen,  
10 So this says "plan of completion."

11 Michael Faden,  
12 Right, which would in turn become, if the Planning Board adopts it, a plan of compliance  
13 to deal with the pending violations.

14 Councilmember Floreen,  
15 Well, I'm having a little trouble -- not that I don't support continuing conversations, I want  
16 to be very clear about that and I respect everybody's efforts in trying to achieve some  
17 agreement. I am not sure what the conversation is going to achieve agreement on, I  
18 guess there's some document that spells it out -- if I could finish. I just want to outline  
19 some of my thoughts because whatever it is that is resolved in Clarksburg is not purely  
20 to address the concerns of certain individuals, and everyone's been very clear that this  
21 would all be subject to a public review and process, I think. That puts it in the Planning  
22 Board's lap at the end of the day. And it's simply not clear to me what the definition of  
23 success of such a mediation is going to be if it's for a plan of completion for the Town  
24 Center. There's an operative development plan I think and a site plan that is the subject  
25 of the debate, and I guess the conversation is what changes might be made in the in the  
26 site plan. Has the judge asked for a planner to an assist the judge?

27 Councilmember Perez,  
28 We thought in the course of our discussions, fortunately for us, by the way, Judge Howe  
29 has planning experience. She worked her way up starting as a Planning Commissioner  
30 of some sort in Baltimore County. So we're blessed by having that unique form of  
31 expertise. But we also wanted to make sure that whoever was doing this -- and at the  
32 time we were talking mediation, we didn't have a specific person in mind, but we were  
33 having the discussion about what do we need to arm this person with in order to  
34 maximize the chances that the mediation will be successful. And the consensus that all  
35 the stakeholders reached was that the community folks needed to have their own  
36 planner, that was accountable to them, not someone working jointly. That Judge Howe,  
37 that the mediator, whoever that mediator would turn out to be, had the necessary



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1 expertise to guide him or her -- in this case it turned out to be her -- in what he or she  
2 needed to do. And there was a clear understanding that the end result here, assuming  
3 success of the mediation, is a joint recommendation -- underscoring "recommendation"  
4 -- to the Planning Board because obviously the Planning Board has the last word. And  
5 equally importantly, prior to the Planning Board passing judgment on what I hope will be  
6 a joint recommendation, what we all hope will be a joint recommendation, there would  
7 be an ample opportunity for public input. And so then product here is again a series of  
8 recommendations that the Planning Board will have to take up, that the public will have  
9 an ample opportunity to comment on, and every recognizes that there are no promises  
10 that the Planning Board will adopt what is recommended. There is certainly a sincere  
11 hope that if everybody comes in together, having reached consensus on a series of  
12 issues where consensus once appeared elusive that that will be obviously a factor of  
13 consequence that the Planning Board will take into account. So, this is I think fairly  
14 straightforward in the sense that we wanted to make this work and we wanted to create  
15 an environment that it would make it work so we have to appropriate money to pay for  
16 Judge Howe, we've got to appropriate money to pay for the technical assistance that  
17 CTCAC is receiving, and I think it was important for them to have their own person that  
18 they could count on, and for whatever technical assistance Judge Howe is receiving.  
19 And that's what we're trying to do here.

20  
21 Councilmember Floreen,

22 I do appreciate everyone's goodwill and good intentions here. Mediation can be many  
23 things in terms of facilitating communication, this is not an arbitration or an event where  
24 I think Judge Howell is expected to do anything other than to facilitate the conversation,  
25 isn't that right, Tom? I mean typically mediation, a mediator doesn't judge things.

26  
27 Councilmember Perez,

28 Correct, but a mediator armed with information as better mediator, and that's why we  
29 wanted mediator to have the ability to have offline conversations with his or her own  
30 expert so that that mediator could make a more informed judgment about  
31 recommendations in facilitating settlement so...

32  
33 Councilmember Floreen,

34 Well, I guess my question is when we want -- I don't know what the fees -- the fee  
35 amount is associated with a planning, this planning advisor? Do we have a number?

36  
37 Councilmember Perez,

38 I don't know what the fee is for the planning expert. I do know Judge Howe's fee, but I  
39 don't know what the CTCAC fee is -- the fee for the planner that they've retained -- and I  
40 don't know the fee that -- and I'm not aware of what it is right now.

41  
42 Councilmember Floreen,

43 It seems to me that would be handy to have insofar as I think of our planning staff as the  
44 folks that we empower to facilitate communication and at least to bring via resource as  
45 to what the County rules are.



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Councilmember Perez,

The planning staff as you know, the planning -- there are I believe two members of the planning staff who are active participants in the mediation. That was a very explicit discussion that we have, and there was consensus about the importance of engaging planning staff. At the same time there was consensus about the importance of engaging others who can provide a complementary perspective on these issues. And what I would suggest for the purposes of trying to move forward here...

Councilmember Floreen,

I still have some questions on this. Could we have a list of who actually is engaged in this mediation, because the staff memo does not describe planning staff as being parties to the mediation.

Councilmember Perez,

Sure.

Councilmember Floreen,

It seems to me it would be helpful to understand what the fee structure is. And also what the end -- I mean, it seems to me there should be a schedule for timing of this conversation insofar as I think we would all agree, I don't think it's straightforward. Maybe it is to some, but I know that community involvement in land use issues is and always will be complex, and well-intentioned. We're not dealing with folks who are unaware of what the rules are at this point. But the contours of this conversation, at least to me, are not clear. Perhaps the group has agreed on its objectives.

Council President Leventhal,

Could I make a suggestion, Ms. Floreen?

Councilmember Floreen,

That would be helpful for us to be provided with at least in some format so we could be comfortable that this is not an unending process.

Council President Leventhal,

Let me make a suggestion if I could. If I can just prevail on the maker of the motion. What I think is important as the mediation gets underway, that it's clear, as I understand it the builder and the developer have agreed to pay for their two-thirds, share but despite his very good efforts and his excellent leadership, no one Councilmember -- not the Council President nor any other Councilmember -- can commit the Council, only the Council can commit the Council. So I guess I would ask the maker of the motion to do is simply state that we support in concept bearing one-third of these costs subject to review of the costs by the Council. We're not cutting a check today. We're simply allowing the mediation to proceed with the understand that we will bear our share and that we will review the costs so that if we find that at a later point we think that we are



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1 there were an inappropriate number of consultants or the consultant billed too much  
2 work, of course we'll review those costs before making final agreement.

3  
4 Councilmember Perez,

5 I think that's a very appropriate amendment to what I'm saying tonight rather than  
6 restating, I will just say whatever you said.

7  
8 Councilmember Floreen,

9 I think though to the parties engaged in the mediation that puts them at a disadvantage  
10 because their choices of how to proceed are subject to our second-guessing. I'm not  
11 proposing to do that, but I do urge my colleagues to approach this and provide the  
12 parties with clarity as to a dollar amount that we commit taxpayer dollars to and a time  
13 frame for resolution.

14  
15 Councilmember Perez,

16 Well, February 3rd or whatever it is is the time frame that the Board has given. That's  
17 the reason why we had meetings I think it was the Wednesday before Thanksgiving, the  
18 Monday after Thanksgiving, through the Christmas and Hanukkah holidays was  
19 because nobody appreciates the sense of urgency more than the participants in the  
20 mediation themselves. They're hopeful of trying to get through it by the end, I suspect  
21 they may need a little more time because it is complicated as you correctly and  
22 frequently point out. And so...

23  
24 Councilmember Floreen,

25 The last date I've heard is March 15 which is very different from February 3rd.

26  
27 Councilmember Perez,

28 No, I think there...

29  
30 Councilmember Floreen,

31 I don't know.

32  
33 Councilmember Perez,

34 ...in order to move it forward beyond the February date they would have to request  
35 permission of the Board as I understand it, to move beyond the date that was the  
36 original date. So I'm not in a position because I, much to my splendor, have backed out  
37 of that because my role had ended. So they're moving as expeditiously as possible. I  
38 know Judge Howe spend an entire day I believe with CTCAC folks and within the last  
39 week or two in Clarksburg to kick the tires, to look at the community, eyeball it, and she  
40 very much appreciates the sense of urgency. And what we're simply trying to  
41 accomplish now is to give them a sense -- I told her privately that I will make every effort  
42 to ensure that our third, that we're -- that we had conceptually agreed to that the Council  
43 agrees to is because the Council President correctly points out I'm one of nine, and we  
44 needed to move forward. Obviously I had conversations with others on the Council, but I  
45 appreciate the fact that the Council President is doing this publicly. I also think that



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1 you're absolutely right, Mr. Leventhal, that this doesn't mean we're not going to review  
2 the receipts that we get to make sure they're reasonable and reflect the work that was  
3 done. Obviously Judge Howe knows that, appreciates that, agrees with that. CTCAC  
4 folks and all the other builders and developers know and appreciate that as well. So,  
5 we're simply committing publicly today to the concept that when we say a third, a third,  
6 and a third, yes, we're in it and here we are publicly announcing that I think we're in it, of  
7 course, subject to appropriate audit.

8  
9 Councilmember Floreen,  
10 We are -- do we have any -- I appreciate that nobody knows the ultimate numbers, but I  
11 honestly have no clue. Are we talking about \$50,000? Are we talking about \$500,000?

12  
13 Council President Leventhal,  
14 Why don't we let Steve Farber and Mike Faden give their best understanding of what  
15 we're talking about.

16  
17 Stephen Farber,  
18 I have had conversation with some of the parties involved. The estimate as Mr. Perez  
19 points out of time required is difficult to assess at this point. But what we do believe is  
20 that, for example, the cost of the mediation itself might be, the mediator and immediate  
21 related administrative expenses might be in the range, for example, of 35 to \$40,000. In  
22 which case the Council's share would be about 13 or \$14,000, in that range. Can we  
23 state that with precision at this point? No, but that's the general range. And as far as the  
24 planning advisory firm that will be employed by the mediator and also assisting CTCAC,  
25 it's our understanding that the costs of that might be in the range of 40 to \$50,000 and,  
26 therefore, once again, one-third of that would be 15 or \$16,000. So the total exposure  
27 for the County or Council would be relatively small.

28  
29 Councilmember Floreen,  
30 Okay, that's very helpful. Thank you.

31  
32 Council President Leventhal,  
33 Okay, the motion is before us, there are no further lights to speak to the motion. Those  
34 in favor of the motion will signify by raising their hands. Any opposed? It passes  
35 unanimously. The next item is a request before the Council by the Clarksburg Town  
36 Center Advisory Committee and Amy Presley, I think you're here to speak for the  
37 committee; is that correct? Why don't you come on up. Amy, as we've said many times  
38 we're grateful for the work you and that the Clarksburg Town Center Advisory  
39 Committee have done to bring to light some serious shortcomings in our planning and  
40 development review processes. We heard from Royce Hanson, we've heard from the  
41 Office of Legislative Oversight. It's very clear that there has been seriously  
42 shortcomings in the planning and development review process, and it's been to the  
43 public benefit that we are now addressing those and moving ahead to restore the  
44 public's confidence in the Planning Board. And so because we have great respect for  
45 you, I wanted to take your request very seriously and to move it toward a decision. But





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1 it's a unusual request. It's not one that most of us have dealt with before. And so -- and  
2 you were interested in a prompt answer. And I don't know where the Council's going to  
3 end up and I don't know whether we can give you a prompt answer but I wanted to bring  
4 this up today. You asked for it. This is our first -- we're back in session today for the first  
5 time since the holidays and this is actually our first meeting since you made the request.  
6 So I as Council President have tried to expedite this discussion. I can't ensure a  
7 decision in this discussion. And I certainly can't ensure that you get the answer that you  
8 want. But it's a policy matter that we need to discuss, and we are going to discuss it in  
9 open session. Now, let me say about this matter being discussed it in open session. I  
10 believe, and Mike Faden can give me his views on this, that there are aspects here  
11 because it relates to a legal proceeding or potential litigation that if you -- Amy, if there  
12 are matters here that you would prefer not to discuss in open session, I believe it would  
13 be in order for a Councilmember to move to go to close session or if a Councilmember  
14 believes that this matter ought to be dealt with in closed session I believe it would be in  
15 order. We would be standard language explaining that under our open meetings act in  
16 which provision would be potential litigation that we would believe to be in closed  
17 session. I've scheduled this in open session, I hope we can deal it in open session. I  
18 heard one of my colleagues earlier state that, you know, "sunshine is the best  
19 disinfectant" and in fact there have been a lot of these issues related to Clarksburg that  
20 would have benefited from greater public exposure and this is a matter that potentially  
21 involves a half a million dollars or more in public funds and certainly the final decision on  
22 whether or not to expend funds is going to be made in open session. But I just want to  
23 make it clear to you, I don't know what questions you may get here, if there are things  
24 you are uncomfortable discussing in open session, you may feel free to respond "Could  
25 we go into closed session to discuss that?" and it would be in order for a  
26 Councilmember to do that if a Councilmember chose to do that.

27  
28 Amy Presley,  
29 We appreciate the opportunity to even be here, and that you're even considering this,  
30 and we'd like this to be in open session.

31  
32 Council President Leventhal,  
33 Excellent, now again with Dr. Hanson we structured the discussion with some limited  
34 success to five minutes.

35  
36 Councilmember Floreen,  
37 We'll start the clock.

38  
39 Councilmember Andrews,  
40 Mr. Silverman took 15 minutes.

41  
42 Councilmember Praisner,  
43 She has to start the clock at the beginning.

44  
45 Council President Leventhal,



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1 What I want to propose now with the consent of the Council is the following: It seems to  
2 me -- we've got the request and the request is in writing and you need not read it, Amy,  
3 although you could make a few salient points when I'm done. Well let me give you a  
4 couple of minutes, Amy, to make your case now and I'll suggest how we may proceed to  
5 consider your request.

6  
7 Amy Presley,

8 First of all, again the Committee thanks the Council for hearing on this today. I was  
9 struck by a couple of comments that you made, Council President, today to Royce  
10 Hanson. We appreciated his input and respect greatly what he had to say and agree  
11 with most of the points from our own work on this over a period of 18 months. I think the  
12 one thing that you said that struck me was that you typically as a Council would expect  
13 that all of the agencies are following the procedures and practices as they should. You  
14 shouldn't have to go to the depths that we have gone on Clarksburg in a typical and  
15 normal, normally-functioning operation for any of the agencies. The fact that we have  
16 had to do that as citizens is way above and beyond the norm. This is not first and  
17 foremost a typical situation. So atypical situations call for atypical requests which, I  
18 think, is reflective of what we have put before you. We have been pleased to do the  
19 work. First it was driven certainly by what I would consider to be a very focused  
20 localized effort for our community which you could even say that's a selfish concern,  
21 how does our community look, are these things being satisfied according to what  
22 developers and builders have promised to the County and to the citizens. But, in the  
23 research we did, one thing led to another in discovery, and we did wind up performing a  
24 thorough gap analysis. We continue the work today. I would be confident in stating that  
25 some of the bills that you'll be discussed later this evening are a direct result of the work  
26 that we have done. That is not a typical scenario, we're happy to be able to have made  
27 that contribution and what you have before you does not include the exorbitant amount  
28 of time spent on that. I myself have logged over 200, I mean 200, we're talking  
29 thousands for the group, 2,600 hours. Our total group of seven has 7,000 hours of work  
30 to ferret some of these things out, and we continue to contribute. We are not asking for  
31 reimbursement of our time. What we are asking at the end of this process that we don't  
32 wind up in debt for the privilege of helping the County to correct these ills that would not  
33 have otherwise come to light. So I do appreciate the opportunity, I think it is a very  
34 sobering request. You mentioned a figure of \$500,000 and from our calculations that's a  
35 not to exceed figure. So with all that said I'm happy to answer specific questions but I do  
36 think this is a unique situation.

37  
38 Council President Leventhal,

39 Okay. Well, thank you, and again just to be clear for the record, the Clarksburg Town  
40 Center Advisory Committee has delivered to the Council last week, January 12th, a  
41 request that the Council reimburse CTCAC's legal expenses. To date legal fees and  
42 out-of-pocket expenses total \$267,441.73 and expenses of CTCAC members which are  
43 itemized in the packet total \$35,691.71. So there is a matter of legal expenses and out-  
44 of-pocket expenses incurred to date. There's also the matter of legal expenses to be  
45 incurred as the mediation gets underway. I want to suggest, with the consent of my



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1 colleagues, that we structure the conversation as follows: It seems to me that there are  
2 three potential responses that we could give the Committee today. We could say, yes,  
3 and that would -- there's an "A" and a "B" to option one, which is the "Yes" option. The  
4 "A" would be "Yes" to the entire request as made. The "B" would be parts of the  
5 request, some expenses could be deemed appropriate while others -- I'm not imposing  
6 my own views here, I'm just responding to things that have been said, for example  
7 meals or meetings with Councilmembers, there's separate policy issues related to each  
8 of these -- might not. Under this option 1-B the Council staff would review the expenses  
9 to determine which ones meet appropriate guidelines, County guidelines consistency  
10 with other similar practices. So Option 1 would be "Yes," Option 2 would be "No."  
11 Councilmembers have stated in conversation that some Councilmembers believe it sets  
12 an unwise precedent that we simply don't support paying these expenses, and Option 3  
13 would be wait to consider the requests until the pending mediation process has run its  
14 course. In conversations with my colleagues, some have expressed the view that we  
15 are optimistic that this mediation process will achieve a good outcome for the County  
16 and for the Clarksburg community, but in advance of knowing where this is going, it's  
17 very difficult for us to make a commitment and, indeed, some -- many have suggested  
18 that generally legal fees are awarded at the end of the legal proceeding, not at the  
19 beginning when an overall assessment is made of costs and damages and who shot  
20 John and who ought to pay for it. So what I'm going to suggest with the consent of my  
21 colleagues is the following: As we now proceed to discuss the Clarksburg Town Center  
22 Advisory Committee's request, and I don't think it requires a motion to discuss it, the  
23 request has been made, and we're considering the request, that Councilmembers state  
24 whether they are for the request, against the request, or prefer to wait to assess how  
25 the mediation goes. If a Councilmember has any question for the Committee,  
26 represented by Amy, then you need not state in advance of asking your question  
27 whether you're for the "Yes" option, the "No" option or the "Wait" option. But I think  
28 because it's almost lunchtime to know try to focus the discussion I'd like to have  
29 Councilmembers state where they are on the matter under consideration. So is there  
30 objection to that proposal from the chair?

31  
32 Unidentified Speaker,  
33 [ INAUDIBLE ]

34  
35 Council President Leventhal,  
36 Is that an objection?

37  
38 Councilmember Praisner,  
39 Which is unrealistic, lunch?

40  
41 Council President Leventhal,  
42 I think it's not unrealistic to ask Councilmembers to focus their comments. If there's  
43 objection, then objection is in order. Hearing no objection then, Councilmembers will be  
44 asked to state whether they're for the request, against the request, or would prefer to



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1 wait to see the outcome of mediation. Any question for Amy need not be governed in  
2 that manner. Mr. Knapp.

3  
4 Councilmember Knapp,

5 Thank you, Mr. President. I guess I am in support of considering this request. And to  
6 that end I would ask the Council, almost make a motion to do what we previously done.  
7 There was no number attached to what we had stated previously. We wanted to see  
8 what the outcome was going to be. I would propose that we could actually if we could  
9 actually put a number on it, to move an appropriation of a number for a placeholder,  
10 we've got the number that's been introduced of -- whether it's been proposed of what,  
11 297-ish, roughly. So introduce an appropriation for 300 and as I understand it, correct  
12 me if I'm wrong, Mr. Faden, that this will effectively run in parallel to the mediation that's  
13 going to occur. The Council can then determine -- but basically get the public process  
14 underway to get feedback from the public as to what the public comment is on this and  
15 then the Council can further have consideration of this once the clock runs, so two or  
16 three weeks, whatever the appropriate time frame is, then the Council can consider  
17 what are the appropriate costs that it feels it would like to have reimbursed or not  
18 reimbursed and also have some better understanding of where the mediation process  
19 is. But this way as opposed to doing something after the fact, do something that's  
20 running in parallel with that process so we end up with more information and can make  
21 a more timely decision.

22  
23 Council President Leventhal,  
24 Okay. Is there a second.

25  
26 Councilmember Silverman,  
27 Second.

28  
29 Council President Leventhal,  
30 So the motion has been made and seconded that the Council propose an appropriation  
31 which as I understand it, Mr. Knapp, would track the request, understanding that that  
32 does not preclude the Option B, that is staff would go through these and the Council  
33 later could comb through them and reduce the amount.

34  
35 Councilmember Knapp,  
36 Could go in either direction as I understand it. That's correct -- is that right, Mr. Faden?

37  
38 Michael Faden,  
39 Yes, if you introduce an appropriation with a certain amount you're not limited to that  
40 amount. You could reduce it or increase it.

41  
42 Council President Leventhal,  
43 Neither do you need to pay that full amount; you could pay something less than that, so  
44 that would not preclude the option where staff goes through this and Councilmembers  
45 could decide to accede to some aspects of the request and not others, it would also set



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1 in motion a mechanism where there would be a public hearing. Okay, so that motion  
2 has been made and seconded and is before the Council. I still would like  
3 Councilmembers to state at beginning of their remarks whether they're for the proposal,  
4 against the proposal, or would prefer to wait until the close of mediation. Okay, I'm just  
5 going to go ahead...go ahead, Mr. Knapp.

6  
7 Councilmember Knapp,  
8 To just...no, to that end I actually had a couple of comments.

9  
10 Council President Leventhal,  
11 Go ahead. Sure.

12  
13 Councilmember Knapp,  
14 I recognize that this is not going to be an easy discussion for us to have. I recognize  
15 there are a number of issues. There is the issue of precedent, fortunately we have some  
16 precedent that Mr. Denis had introduced some years prior that I think that this mirrors to  
17 some extent. So it's not as though this is not completely out of the realm of possibility, it  
18 is something that has been introduced and has been passed by the Council only to be  
19 vetoed by the County Executive . And I don't think it's clear even within the community  
20 is the best way to proceed necessarily. The concern that I have and is one that I know  
21 many of you have been made aware of is the notion that if there are issues that have  
22 been raised there are issues that impact the entire community. The mediation process  
23 is one that's going to ideally result in some outcome for the benefit of the community. If  
24 legal fees as is typical in a mediation process are a part that, then those dollars are  
25 coming directly from whatever the mediated settlement would be for the community and  
26 it probably would come away from some amenity that the community, the broader  
27 communities should be seeking. That is certainly one perspective. There's the  
28 perspective of precedent that I think needs to be addressed, there's also the notion that  
29 if we're going to take money out of the general fund that that's money that could have  
30 also gone to Clarksburg that wouldn't -- that could be going somewhere else, there are  
31 a lot of pieces here to be addresses. The concern I have is though that since CTCAC,  
32 given the work that that they have done and I appreciate it and they've spent a lot of  
33 time, is not necessarily the community's voice in that mediation process. And so at  
34 some point the broader community needs to weigh in on this, and in effect once  
35 whatever mediated settlement is reached, the community, as Mr. Perez had indicated,  
36 will need to weigh in on whatever that mediated settlement is. I didn't want us to reach a  
37 situation where because the mediated settlement included some set of legal fees going  
38 back to CTCAC, that then proposed a difficulty for the broader community because that  
39 is something that the community should have been a recipient or beneficiary of. So I  
40 wanted to at least get this process moving for us to have that discussion. I've gotten  
41 comments from people within Clarksburg who aren't necessarily supportive of the  
42 County making an appropriation. I think that's something that we need to talk about and  
43 take into consideration but it's a conversation that we need to have. I think we all  
44 recognize -- we've just spent the last three hours talking about issues that have been  
45 raised as a result of CTCAC's efforts in this process that are difficulties with the



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1 County's planning process. Clearly it is a direct link between the efforts that they've  
2 raised and the results of the efforts that we've undertaken in the last few months to try to  
3 figure out to resolve and rectify and regain the credibility for Park and Planning. So  
4 clearly the County has some significant skin in this game whether we like it or not. Does  
5 that mean we bear the entire costs, I don't know, but I think it certainly means we bear a  
6 portion of those costs, and I think we need to take that into consideration, which is why I  
7 made the motion.

8  
9 Council President Leventhal,  
10 I'm going to proceed right down the -- just keep on going. Mr. Andrews.

11  
12 Councilmember Andrews,  
13 Thank you. Well, while I do think it's entirely appropriate for the Council to approve  
14 funding for mediation efforts, I think it would be at best premature for the Council to  
15 adopt this motion. I think it would undercut efforts in mediation for the community to  
16 recover some or all of its legal costs from the developers and builders and I don't think  
17 we should undercut that effort and I think this motion would reduce that chance. I don't  
18 know what's going to come out of mediation, I don't want to prejudge it but I don't think  
19 we shouldn't take action. I think we'll make it more difficult for -- or make it less likely, in  
20 my view, that that developers would be paying for some or all of the legal costs and I  
21 think this motion would likely have that effect, so I'm not going to support it.

22  
23 Council President Leventhal,  
24 Mr. Perez?

25  
26 Councilmember Perez,  
27 If we had closed captioning right now, the closed captioning I think would read Council  
28 negotiating against itself. I have great respect for all the parties involved in the  
29 mediation and I was happy to have been involved. We're talking about hundreds of  
30 millions of dollars of investment in Clarksburg Town Center. Hundreds of millions of  
31 dollars of investment to build a community that's going to be a world-class community.  
32 The number one item when we discussed mediation and the thing that gives me the  
33 greatest sense of optimism that mediation is going to be successful is that everybody  
34 agreed that everything is on the table. There were no preconditions to mediation, none  
35 whatsoever. Nobody walked in -- the builders didn't walk in and say if you put attorneys'  
36 fees on the table, I'm out of here. They didn't do that. What they explicitly said  
37 repeatedly -- and everybody said this, is there are no preconditions to mediation. So I'm  
38 having difficulty understanding why we are negotiating against ourselves right now and  
39 providing what would amount to a windfall for-- a windfall that developers are not  
40 recommending. They haven't come to us and said, you know, this deal ends if you put  
41 attorneys' fees on the table. I have difficulty with the premise that if you have \$300,000  
42 which I don't -- you're the math major, Phil, how many hundreds of millions of dollars --  
43 what percentage of that, \$300,000 is "X" percent of \$250 million, I have difficulty with  
44 the concept that that's going to be a deal breaker at the end of the day. I don't believe it  
45 is, and that's why I strongly believe that we are negotiating against ourselves. I also



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1 respectfully disagree with the notion that if we add \$300,000 -- if the developers pay  
2 \$300,000 for legal fees at the end that's \$300,000 less in trees and berms and things  
3 like that and it's a \$300 million project, I find that to be, frankly, unrealistic. And so I'm  
4 also concerned that we're about to vote on a motion that we haven't given any input to  
5 the public on. Actually there's half a dozen e-mails that we've gotten from community  
6 folks in response to a story that appeared in the "Washington Post" on Sunday, clearly  
7 not a sufficient sample size to extrapolate. But it's 6-0 right now saying this is not at  
8 good idea. You know, why not me?

9  
10 Councilmember Silverman,  
11 [ INAUDIBLE ]

12  
13 Councilmember Perez,  
14 And so I'm frankly very concerned about voting on something right now when we're  
15 talking about setting aside money and we really haven't given the public an opportunity  
16 to be heard. And so I'm really -- again, I appreciate the work that everyone has done,  
17 but -- given the fact that there were no preconditions to the mediation, I'm at a loss to  
18 understand why we want to basically provide what amounts to a windfall when no such  
19 request has been made, I reiterate, and where I don't think it's necessary for the  
20 resolution of this mediation. And so we should be mindful of the fact that there are no  
21 preconditions, and at best, to address Mr. Leventhal's where are you on this, at best it  
22 should be without prejudice, come on back later, no guarantees. That would be  
23 probably the best I'd be willing to say at this time because I really think that we haven't  
24 heard enough from other members of the public. I'm wondering in response to Mr.  
25 Knapp's comments when other community members from Clarksburg come up, do we  
26 need to pay their legal fees for the fairness hearings, because we're paying legal fees  
27 for some Clarksburg folks, why shouldn't we pay for all Clarksburg folks. Well, you could  
28 argue they got the ball rolling, that's a fair point. But I think once you start having to  
29 have those debates, that's another very knotty issue and it's a an avoidable issue  
30 because there were no preconditions. So let's stop negotiating against ourselves, and  
31 we can take this up down the road. If it doesn't work, but I said to folks, and again I was  
32 only speaking as one -- if you take the issue of attorneys' fees off the table, you do so at  
33 your peril. That was the message I delivered then, that's the message I deliver today  
34 publicly, and that's the message I think we should deliver as a Council.

35  
36 Councilmember Knapp,  
37 Mr. Leventhal, just a point of clarification, what I moved was introduction of the  
38 appropriation, not passage of an appropriation today, but introduction of an  
39 appropriation.

40  
41 Councilmember Perez,  
42 It's been moved and seconded, so I was -- I mean whenever I hear a moved and  
43 seconded, I'm usually thinking we're about to vote on something.

44  
45 Council President Leventhal,



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1 Yeah, I think Mr. Knapp makes an important point, obviously none of us today can stop  
2 Mr. Knapp from introducing an appropriation, he can do that and if he does that it'll go to  
3 the public hearing and ultimately that would come to the Council depending on  
4 schedule, which ultimately the Council President would decide. So, what we're really  
5 talking about now, because we were asked by the Clarksburg Town Center Advisory  
6 Committee is how to respond to its request. The Clarksburg Town Center Advisory  
7 Committee has asked the Council to respond to its request at the earliest opportunity,  
8 hopefully today, and we may not be in a position to give them a favorable, or even an  
9 unfavorable answer to their request, but what I said at the beginning was that I am  
10 trying to move this to the Council so that the Council can give an answer to the request.  
11 That request may be "Yes," "No," "Maybe," "Without prejudice," any of those things, but  
12 Councilmembers need to be able to express their reaction to the request. I think we're  
13 not actually debating the appropriation at this time, neither does any signal that we send  
14 in this discussion preclude you, Mr. Knapp, as a Councilmember from introducing  
15 anything you decide to introduce that's in order and consistent with the Charter and all  
16 that, including a special appropriation for this purpose. Ms. Praisner.

17  
18 Councilmember Praisner,

19 Well in the interest of time, let me just say that I'd like to associate myself with the  
20 comments of Mr. Andrews. I, first of all, had also made similar comments as Mr. Perez,  
21 that mediation should include everything on the table and whether it's a discussion with  
22 the Merit System Protection Board or the Board of Appeals, or anyone else, the  
23 conversations of how attorneys in violation issues are discussed, attorneys' fees are  
24 obviously a function and a portion of that discussion. Let me also say that as has been  
25 reflected in the newspaper and my comments to Mr. Craig, I am concerned and troubled  
26 by what would I think no matter how you slice the issue, and how you create the issue  
27 to make it unique, create a precedent, which as Mr. Knapp indicated, may have already  
28 been before a Council and at which time I believe I voted no on the issue. I do not think  
29 we should in this situation, or in any situation, absent some kind of structure that says  
30 that attorney fees are a piece of what will be considered, we should not be introducing  
31 taxpayers' dollars into the process. And I think that puts us -- and many citizens who  
32 might come forward with previous requests or requests that are lively and before  
33 somebody -- some other entity at this time puts us in a situation where the question is  
34 "Why not them?" So I think I've made myself clear.

35  
36 Council President Leventhal,  
37 Mr. Silverman.

38  
39 Councilmember Silverman,

40 Thank you, Mr. President. I certainly would prefer that we didn't use taxpayer dollars in  
41 this case, but I do think there's -- there is a precedent here and we ought to set it, and  
42 the precedent is a very straightforward one. A group citizens went to the Planning  
43 Board, they complained about what was going on in Clarksburg. The Planning Board, in  
44 effect, because of this unique set of circumstances realized that its own staff was up to  
45 its eyeballs in the decision-making process that led to what happened in Clarksburg,





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1 essentially, in my opinion, abdicated it's normal customary responsibility under the  
2 Montgomery County Code to act as an enforcement agent and they are the party that  
3 normally proceeds. We had a little brief discussion about this before. Normally a citizen  
4 group goes in, complains to a staff person, the staff person reviews it and decides  
5 whether to bring it forward. In this case, couldn't very well go to the staff person  
6 because the report from Park and Planning staff itself said that the approvals to the  
7 developers in Clarksburg were a function of the good faith belief by the staffer that she  
8 had the authority to go ahead and approve site plan amendments. In addition, the  
9 permits that the developers asked for were approved through the permit process with  
10 permit review both at the Planning Board and then issued by the Department of  
11 Permitting Services. We have spent -- I don't know -- eight months, six months, I can't  
12 keep track -- trying to figure out who is taking ownership of these issues and who isn't.  
13 Given the fact that this, in my opinion, is a very unique set of circumstances involving  
14 our Department of Permitting Services and our planning staff at the Planning Board, in  
15 effect being as culpable as anybody for allowing that to happen in Clarksburg, it seems  
16 appropriate to me that government ought to step up and be accountable for the fees  
17 that have been incurred by CTCAC. This will be a unique set of circumstances, but you  
18 know what, the next time a community member has to prosecute their own case before  
19 the Planning Board and the facts clearly show that staff of the Planning Board and DPS  
20 approved the permits that led to the alleged violation, then, yes, they ought to be  
21 knocking on our door for recovery of attorneys' fees. This is a unique set of  
22 circumstances. I don't see that that as tantamount to opening the door to every group  
23 that comes in and says, "Hey we had a complaint," but you know what, if the complaint  
24 involves government malfeasance then I think the government ought to step up and be  
25 accountable. And that's why I'm supporting the introduction.

26  
27 Council President Leventhal,  
28 Mr. Subin it's your turn if you'd like to speak.

29  
30 Councilmember Subin,  
31 Pass.

32  
33 Council President Leventhal,  
34 Ms. Floreen.

35  
36 Councilmember Floreen,  
37 Thank you, well I've got a big bill at home, Steve, for the case I brought against the  
38 County in litigating height in Silver Spring. I won.

39  
40 Multiple Speakers,  
41 That's statue of limitations has expired.

42  
43 Councilmember Floreen,



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1 DPS was in error and I see from a review of the bills here that that issue has been  
2 researched. They could have given me call. I've got to say, I have some questions if that  
3 would be all right.

4  
5 Council President Leventhal,  
6 Questions are in order.

7  
8 Councilmember Floreen,  
9 Amy, what is the -- how many members are there in CTCAC?

10  
11 Amy Presley,  
12 There are right now seven; of those there are four that are considered core members  
13 and that there are four that regularly...

14  
15 Councilmember Floreen,  
16 What is their financial contribution to this?

17  
18 Amy Presley,  
19 Been beyond what you see itemized here.

20  
21 Councilmember Floreen,  
22 In terms of...

23  
24 Amy Presley,  
25 In terms of dollars.

26  
27 Councilmember Floreen,  
28 ...legal fees. Have you paid anything to Knopf and Brown?

29  
30 Amy Presley,  
31 Yes, has been -- and Dave Brown is in the audience and he can correct me if I'm off, it's  
32 roughly \$7,000.

33  
34 Councilmember Floreen,  
35 You've paid \$7,000 so far. And you have seven people as part of CTCAC.

36  
37 Amy Presley,  
38 That's correct.

39  
40 Councilmember Floreen,  
41 What is your initial understanding of conversation about with them about attorneys' fees  
42 at the beginning of the game in terms of oversight, who was going to do what?

43  
44 Amy Presley,



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1 Way back, the idea was in and out if you recall or look at history documents that are  
2 contained in the OLO report, we entered in with an attorney right at the point when we  
3 had first had gotten for ourselves a reconsideration hearing after many months, so at  
4 one point one would assume, if you have a reconsideration hearing before a Board, you  
5 expect the normal process. We thought it would be one or two events working with an  
6 attorney, so we said we'll shoulder the costs, we'll do what it takes. But then one month  
7 led to another month and another month and uncovering staff malfeasance, as Mr.  
8 Silverman mentioned. So it went from a commitment by individuals to the realization  
9 that to get this done was going way beyond what anyone ever imagined would have to  
10 be done to do this work.

11  
12 Councilmember Floreen,  
13 You all must have realized at a certain point that whoa, this is a lot of money.

14  
15 Amy Presley,  
16 Certainly did.

17  
18 Councilmember Floreen,  
19 Did you have any conversations about limiting the costs?

20  
21 Amy Presley,  
22 No, we didn't, what we had was a conversation with an attorney where two of the key  
23 members, myself and Kim Shiley, made a commitment to our attorney, I jokingly stated  
24 that I would serve as an indentured servant for two years, but I seriously committed that  
25 if they were willing to continue with us that I would for whatever such time as it would  
26 take, pay a monthly amount on our own and shoulder that cost. What I resent though is  
27 being put -- as a citizen, being put in the position where we would have to make those  
28 kind of decisions where you have to say do we quit this effort and let the Planning Board  
29 -- not acknowledging and not knowing the extent of the errors and all these violations,  
30 do you let that go because there's no one to cover an attorney fee? We made the  
31 decision not to do that because we saw there was a bigger benefit to be gained, so we  
32 continued, and I will today, if this Council doesn't see fit to reimburse the costs to correct  
33 County agency problems, then I personally commit to Knopf and Brown, I will pay them  
34 on a monthly basis whatever it takes to get the bill paid but I resent being put in that  
35 position.

36  
37 Councilmember Floreen,  
38 Okay, well, you know, there are many, many community groups who have been  
39 engaged in these issues.

40  
41 Amy Presley,  
42 And have they resulted in the types of bills and the multiagency acknowledgements that  
43 we have had now over a period of 18 months to have the OLO report come out and  
44 acknowledge that these things are the direct results of the developer -- or, excuse me --  
45 of the agency issues and then to have this shift at the point of mediation. I wanted to



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1 clarify something that President Leventhal had stated that positioning this such as that  
2 it's fees for mediation, no, no, no. I would like this to be separated out so that there's a  
3 clear understanding. There is a fee for work that is already done that has resulted in Mr.  
4 Hanson's being present for you today, that has resulted in multiple meetings at the  
5 Planning Board for reform, that has resulted in what we're going to hear from you  
6 tonight in terms of eight bills before you for reform. Those things I maintain in  
7 agreement again with Council President, that had you gone on as a Council assuming  
8 that all of the agencies were in in order and doing their jobs as they should be, and no  
9 problems existed and CTCAC had not taken on the responsibility to pursue regardless  
10 of the legal fees -- that we wouldn't be here today.

11  
12 Councilmember Floreen,  
13 Looking at your bills and the itemization of all this stuff, it looks to me like it's -- you're  
14 defining this as your involvement in reform of the regulatory process.

15  
16 Amy Presley,  
17 That's correct.

18  
19 Councilmember Floreen,  
20 Is that pretty how you all think about it.

21  
22 Amy Presley,  
23 Correct.

24  
25 Councilmember Floreen,  
26 Yeah. I wanted to ask you, we as you know, have a institution designed to help  
27 community members the People's Counsel.

28  
29 Amy Presley,  
30 Yes, I'd be happy to talk about my involvement with the People's Counsel.

31  
32 Councilmember Floreen,  
33 What's been your engagement with them?

34  
35 Amy Presley,  
36 We attempted to engage Mr. Klauber early on after we had first presented information to  
37 Marlene Michaelson, trying to get our information through to the PHED committee. And  
38 the first engagement with Mr. Klauber was to have him sit at a meeting with our team  
39 with Park and Planning before a reconsideration was granted and to sit with us in a side  
40 room as they -- they being everyone collectively including Park and Planning  
41 representatives and Mr. Klauber urged us to sit in a side room in private and discuss  
42 with developers how these things should be handled. We declined that offer and have  
43 not since been working with the People's Counsel.

44  
45 Councilmember Floreen,



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1 So you weren't happy with his advice?

2  
3 Amy Presley,

4 No, we were not. And, in fact, the advice did not go beyond acknowledging that he  
5 would attend a meeting with us which he did, in fact, do. But there was not advice as to  
6 pressing forward on hearings, which we did ultimately after having retained the counsel  
7 of Knopf and Brown.

8  
9 Councilmember Floreen,

10 There's no question you made many, many choices in this sort of thing. Have you made  
11 a request to Park and Planning for fees, costs?

12  
13 Amy Presley,

14 No, we have not. They do not have a vehicle currently in place to acknowledge that, it  
15 was something we had suggested in terms of the violations, even looking at the last  
16 staff report acknowledging multiple violations across the entire project, and  
17 recommending fees for fines. We had suggested that perhaps there might be a way to  
18 redirect some of those fees for the fines toward our efforts but we have been advised to  
19 this date that there is no vehicle in place to allow that to happen.

20  
21 Councilmember Floreen,

22 So you've never have asked them?

23  
24 Amy Presley,

25 We have asked in terms of staff discussion. We have not had an opportunity, and would  
26 not have an opportunity even to ask that question until and in such being in front of the  
27 Board having them rule on the fines. That's the point at which we'd be able to ask.

28  
29 Councilmember Floreen,

30 You haven't made a comparable request to the Planning Board.

31  
32 Amy Presley,

33 It wouldn't make sense.

34  
35 Councilmember Floreen,

36 Comparable to what we've received.

37  
38 Amy Presley,

39 No.

40  
41 Councilmember Floreen,

42 Thank you. Well, I don't think this is a simple question, Mr. President. I'm not prepared  
43 at this point to commit on proceeding in this regard. There are -- I don't want to sit here  
44 and second-guess the choices of community members, the choices of how they've  
45 chosen to spend their time or their resources. That is always a community opportunity. I



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1 am concerned very much with the precedent, and I do feel very strongly that any costs  
2 that are claimed in association with this should not be paid by the taxpayer. I think it  
3 should be a subject of the conversations that are ongoing in the mediation.

4  
5 Council President Leventhal,  
6 Thank you. Mr. Denis.

7  
8 Councilmember Denis,  
9 Thank you, Mr. President. I support the motion. Reference has been made to the  
10 legislation I introduced several years ago and I'd like to describe it a little bit and then  
11 discuss the matter before us. That was Bill 16-01 -- 01 standing for the year -- and it  
12 arose out of a case that was brought by residents of Bethesda involving a variance  
13 before the Board of Appeals. They went before the Court of Appeals twice, once in  
14 1997, and another time in 2000, and won both times. I felt that something in the nature  
15 of a special appropriation was in order and so I introduced the bill. It was changed  
16 somewhat during the legislative process and made more general. I think had it passed  
17 into law, it might have helped prevent Clarksburg because it was actually intended not  
18 only to rectify the situation that had been brought to my attention but also to serve as a  
19 warning to those in County government and in the departments that there could be  
20 liability if they did not adhere to the law. When the bill came before the Council after  
21 much declaration and discuss, the bill passed five votes in favor, three opposed and  
22 one abstention. The bill was then vetoed by the County Executive so it came back to the  
23 Council for consideration of the veto. On consideration of the veto, it was five votes in  
24 favor of the bill, four votes against the bill. So the veto was upheld. So while the bill did  
25 not pass into law, the Council -- the previous Council to be sure -- did support in its  
26 majority the principle that I believe underlines the situation here. I believe that the  
27 people who have worked on this from the community standpoint are heroes. They have  
28 been offered medals. They're asking instead for reimbursement. And other forms of  
29 satisfaction I'm sure. To me the only issue is the reasonableness and the  
30 reasonableness of the counsel fees and of the expenses. And that is why I feel that the  
31 motion -- or the matter that's to be introduced should I guess should we vote on it or  
32 however it's going to be structured, but I would like to see this before the Council for  
33 public hearing, and as a placeholder. Basically that's what this is. This is a placeholder  
34 so at the end of the process when these matters are resolved or not, one way or the  
35 other, we could as part of the budget address this situation. Seems to me that if the -- to  
36 the extent the community has already prevailed and I think that if there -- I think it has in  
37 the court of public opinion, at least. It remains to be seen how some of these legal  
38 issues work themselves out. But in the long run, I believe that the reforms of the  
39 process, whether they be of a quality control nature as outlined by Dr. Hanson or of a  
40 statutory nature, matters before the Council and matters before the state legislature, I  
41 think it will in the long run serve as a warning to all people in County government,  
42 everywhere and forever that you just can't blow citizens off. The way it occurred in this  
43 particular situation. And had you all been listened to and had there been due diligence  
44 at the critical time, we wouldn't be here today, at least that's my evaluation of it. So



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1 that's why I do support the motion and I supported this principle for quite a number of  
2 years, and that's why I introduced the bill five years ago.

3  
4 Council President Leventhal,

5 Excellent, this has been very useful and what I'm hearing, I'm going to try to distill what  
6 I've heard from my colleagues, there is a fairly sharp disagreement among  
7 Councilmembers. That's to be expected. There are many issues on which we have  
8 division of opinion. So it's not surprising that some Councilmembers would feel strongly  
9 one way and other Councilmembers would feel strongly another way. As I've been  
10 making notes here in terms of how many Councilmembers feel each way, it seems to  
11 me that there is a potential majority, potential majority for paying these expenses, but  
12 not today. It does not appear that the majority of the Council agrees today to make this  
13 commitment. What I heard from Mr. Perez, maybe he could repeat it if I've got it wrong,  
14 was maybe without prejudice let's see how the mediation plays out to that affect. Was  
15 that a misstatement, Mr. Perez?

16  
17 Councilmember Perez,

18 I don't think you should count on me to be a fifth vote for this. I think that everything was  
19 on the table. And I think you ought to go back to the table and put this on the table and I  
20 don't, frankly -- I'll just say that. I hope you put this on table because I think you're going  
21 to get it if you put it on the table.

22  
23 Council President Leventhal,

24 So what my advice to you, based on what I've heard here, is to proceed with mediation,  
25 the Council clearly supports the concept of mediation, and we are not into a position  
26 today as a Council to introduce a special appropriation by the County Council. Any  
27 Councilmember has the right to introduce that special appropriation and should a  
28 Councilmember do that then a public hearing process would ensue. So I think the best I  
29 can say is we are not saying no, we're not saying yes, today. We're optimistic that the  
30 mediation will achieve a good outcome for the County and for the community and I think  
31 the question of the reimbursement of legal fees awaits the results of mediation. If any  
32 Councilmember strongly disagrees with my read of what message we're sending here  
33 they should let me know now. But that's about the best distillation I can provide of what  
34 I've heard. There is a difference of opinion and we all, I think support the concept of  
35 mediation, and we encourage you to proceed with mediation. Mr. Knapp.

36  
37 Councilmember Knapp,

38 I'd like Mr. Faden to see if we could put something together so I could introduce a  
39 resolution or special appropriation this afternoon?

40  
41 Council President Leventhal,  
42 Amy, did you want to comment?

43  
44 Amy Presley,



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1 I actually wanted to ask a question, it does seem that in this being put into a mediation  
2 only type of category, that the Council itself is now putting the citizens in a strained  
3 position and in a position where this is -- it's a type of leverage that is not really  
4 comfortable for two reasons. The first being that Mr. Perez has stated that this was sort  
5 of a windfall for the developers, but at the same time he stated that this was a drop in  
6 the bucket in terms of the millions being spent on the project. The reality is that the  
7 Planning Board has proposed some measure of fines based on the violations they've  
8 ruled on to date. They have not ruled on all of the violations. Part of this mediation effort  
9 was, in fact, inclusive of the Planning Board, staff both Rose Krasnow and John Carter,  
10 so that we could collectively prepare a compliance package to go to the Board which  
11 makes a lot more sense. But the issue I have is imagining that any amount of money  
12 proposed for covering legal fees that have been expended prior, coming out that have  
13 agreed upon settlement to imagine that that will not in any way affect whatever is  
14 delivered to the community, is erroneous, it will absolutely. These people are about  
15 bottom-line, I would be too. You run a business, you factor the costs into the solution  
16 that you're developing. And I find it very disturbing to think that we have to go back to  
17 the community and state that not only did we have to do the work to uncover the issues  
18 with the County agencies, just to get to the point where our issue could be heard but we  
19 now have to say to them I'm sorry about whatever it was, the skateboard park, the extra  
20 trees, the whatever because \$500,000 of that, well, I'm sorry, it had to pay to get us  
21 here. And what I hear from some Councilmembers is that that's the perspective we  
22 should be taking, that there is no acknowledgement that work that was done to imagine  
23 that we should wait for a mediation result, it takes the citizens you better mediate this  
24 way or don't even come back before us so I find that to be more of a confirmation that  
25 there's no recourse for a citizen to go through this process. If, number one, I can't count  
26 on the Planning Board to begin with, and number two, once we do the work ourselves  
27 and have exorbitant time and expense expended on this then we come before Council  
28 and the Council says "Well, let's just wait and see, go on ahead to mediation," I'm not  
29 sure mediation is the best answer for the public. I think in that instance it puts other  
30 questions on the table, if there can be no consensus even that a Council feels that its  
31 citizens should not have to mortgage their homes to go through a process that's  
32 supposed to already be working.

33  
34 Council President Leventhal,

35 Okay. let me make a comment, Amy, because it is -- in our conversations you've made  
36 that same case. In other words, that and if I'm misstating it, feel free to correct me.  
37 We're giving you a lot of leeway to have a discussion and a dialogue, we've basically  
38 tried to send -- we've entertained your request, we've sent you a signal as to how we're  
39 going to handle your request for now. You're disputing that signal and we don't usually  
40 get into dialogue like this but they're unusual circumstances and it's an unusual  
41 conversation. You've made the point that you believe that a dollar from builders and  
42 developers that reimburses the communities for its legal fees may be perceived as a  
43 dollar that does not to go community amenities. I hope I'm not misstating what you said.

44  
45 Amy Presley,





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1 No, that's correct.

2  
3 Council President Leventhal,

4 I would only respond that a dollar from the County Council that goes to reimbursing  
5 legal fees could also be interpreted in the community as a dollar that doesn't go to  
6 community amenities. The residents of Clarksburg are my constituents. We have an  
7 obligation to provide a fire station, we have an obligation to provide school services, we  
8 have an obligation to provide traffic lights and intersection improvements and there are  
9 things that we expect the developers to do as part of the site plan, but there are things  
10 that the County is obligated to do as well. So, I would only say that the premise that  
11 there is a limited pool of developer dollars and if you don't spend those dollars here -- or  
12 if you spend them here you're not spending them there, if your concern is how will this  
13 play among the residents of Clarksburg, the very same case might potentially be made  
14 for County dollars, if County dollars go here, they don't go there.

15  
16 Amy Presley,

17 Except that their tax money is already being used towards the agencies that are  
18 supposed to be performing a function, and if that function is not being performed  
19 appropriately, then that is a waste of that money, and I would hate to calculate the  
20 amounts of dollars that may have been wasted to that end. We're talking about an  
21 amount that is less than half a million dollars. We're talking about a \$500,000 cap. I  
22 think explained appropriately to citizens, they understand the difference between that  
23 type of money and ongoing issues having tax dollars spent in ways that are not  
24 providing the services that they expect those tax dollars to be providing.

25  
26 Council President Leventhal,  
27 Mr. Perez.

28  
29 Councilmember Perez,

30 Amy, I'm just asking you to do what -- I've been around the block a few times on  
31 mediations and I'm asking you to do things that are no different than any other  
32 mediation. Negotiate your best resolution and then you put your attorney's fees on the  
33 table and you negotiate that, and that's what I'm asking. I don't see why this situation  
34 has to be different from every single other mediation that I have ever been involved in.  
35 Mr. Leventhal stated it rather eloquently that we have the same issue here, so I really  
36 do respectfully take issue with the premise that a dollar from the developer for your legal  
37 fees is a dollar less that goes into attorneys' fees -- or goes into trees. Which is why I  
38 made the initial point. We're talking about a multi hundred-million dollar investment. The  
39 issue of legal fees, that's why everything's on the table. And so I just -- I don't want to --  
40 I've always been a big believer in being straight up with people and I don't want you to  
41 walk out here thinking "Okay, we can take this off the table because the County  
42 Council's going to cover us." I think if there's anything we've learned from this morning  
43 is that consensus is elusive on this issue and I respect the views of my colleagues who  
44 disagree with me but I think it would be rather imprudent at a minimum to walk out here  
45 thinking okay let's just take that off the table because they'll cover it for us because I



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1 only speak for one, but that's not certainly what I heard here today and I just don't see it.  
2 And I'm just asking you to do what is done in every other mediation.

3  
4 Amy Presley,  
5 Have you seen other or attended other mediations that are a result of this type of  
6 County involvement that we're talking about? We're talking about...

7  
8 Councilmember Perez,  
9 I'll be glad to share my mail with you, what I'm getting from people is, why didn't you  
10 give me money?. because I worked my tail off, I uncovered things that were being done  
11 wrong and I don't know any of the facts of these, but that's the precedent issue that  
12 Councilmember Praisner was addressing. So I think the answer that a number of  
13 residents would say is "Yes," and that's not to minimize the work you're doing. And,  
14 frankly, anyone who wants to come in to a public hearing in which the developers have  
15 agreed to pay \$300,000 or \$200,000 and take issue with that. I will be the first one to  
16 defend you in that, because anyone who wants to do that simply hasn't been doing their  
17 homework. If that is your biggest fear I will be your first person there to say to anyone in  
18 the community who wants to take issue with a settlement that includes attorney's fees,  
19 that you folks are way off the mark. And so I understand that concern, but I think there  
20 are ways of dealing with it.

21  
22 Council President Leventhal,  
23 Okay. Amy, we've given you this time, we've tried to make the decision, at some point  
24 we need to curtail the back-and-forth debate. Mr. Knapp.

25  
26 Councilmember Knapp,  
27 The only part that I would add is there's an assumption that all of the parties are at this  
28 table where the mediation is occurring. The reality CTCAC as an component of the  
29 community is at the table, the broader community is not represented at the table, and  
30 neither is the County. And so to say that is a mediation like any other mediations, a  
31 couple of the parties aren't even there in the first place so I think it's important for people  
32 to recognize that, that once some outcome is reached there is still a further deliberation  
33 that needs to occur. And so, to try to make sure that that outcome is something that a  
34 broader community can accept I think is something that we all want to get to, to have  
35 them all go through mediation and end up with something that is not workable for the  
36 broader community is a waste of everyone's time.

37  
38 Council President Leventhal,  
39 Ms. Praisner.

40  
41 Councilmember Praisner,  
42 Well, let me just say I think that point, Mr. Knapp, is true in any mediation, not  
43 everybody is always is at the table in every situation. And in this case, the issue does go  
44 back to the Planning Board where there is an opportunity for public comment. So I don't  
45 think the situation in this mediation is any different.



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- 1
- 2 Council President Leventhal,
- 3 Okay. That brings this matter to a close. We will meet again for the public hearing, we're
- 4 going to take a recess for lunch and the public hearing will commence at 2:00 p.m.

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**TRANSCRIPT**  
**January 17, 2006**

**MONTGOMERY COUNTY COUNCIL**

George Leventhal, President  
Phil Andrews  
Nancy Floreen  
Thomas Perez  
Michael Subin

Marilyn J. Praisner, Vice President  
Howard Denis  
Michael Knapp  
Steven A. Silverman



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1 Council President Leventhal,  
2 Good afternoon, ladies and gentlemen. This is a public hearing on a resolution to grant  
3 a new franchise agreement for the use of the public right-of-way to MD-CLEC, a  
4 subsidiary of Crowne Castle Solutions Group. A work session of the Management and  
5 Fiscal Policy Committee is tentatively scheduled for January 23rd at 2:00 p.m. Persons  
6 who wish to submit additional information for the Council's consideration should do so  
7 by the close of business today. Before beginning your presentation please state your  
8 name clearly for the record. We have no speakers. I'm sorry, so don't state your name.  
9 Agenda Item 10; this is a public hearing on Bill 41-05 Health Services Advisory Board  
10 for Montgomery Cares Program Establishment. Establish an advisory board of the  
11 Montgomery Cares Program with certain requirements regarding composition, terms,  
12 officers, duties, voting, meetings, and staff and generally amend the law relating to  
13 healthcare services for uninsured County residents. A work session of the Health and  
14 Human Services Committee is tentatively scheduled for January 23rd at 2:00 p.m.  
15 Persons who wish to submit additional information for the Council's consideration  
16 should do so by the close of business today. We have four speakers, Dan Moskowitz,  
17 representing the Commission on Health -- please come up -- Diane Briggs representing  
18 the Montgomery County Medical Society -- please come up. I believe it's Arva Jackson,  
19 isn't it? Oh, it is Anna Jackson? What? Oh, it is Arva Jackson. Okay, it says Anna, but I  
20 don't know Anna Jackson, but I know Arva Jackson and she's here -- representing the  
21 Primary Care Coalition, and Carol Garvey, who is here speaking on her own behalf.  
22 Please state your name clearly for the record, Mr. Moskowitz, please begin.

23  
24 Dan Moskowitz,  
25 My name is Dan Moskowitz, I'm the Vice Chair of the Commission of Health. Our chair,  
26 [Okeena Christian-Dark] unfortunately is not able to attend but with me are members of  
27 the Commission, [Pernel Crockett] and Myram Granthon, we want to thank you for the  
28 opportunity to comment on the proposed Bill 41-05 regarding the advisory board for  
29 Montgomery Cares. In very simplistic language, the Commission on Health monitors  
30 and advises the County on public health issues. But more specifically, as outlined in  
31 County Code 24-23, the Commission on Health advises the County Council and the  
32 Executive by reviewing public health programs and services, commenting on gaps,  
33 deficiencies, and duplication in the County health programs and services, commenting  
34 on proposed allocations on funds and advising on public health planning needs. It was  
35 in these roles that the Commission on Health through the leadership of our past chair  
36 [Brett Ewig] participated in the early development of Montgomery Cares. And it is in  
37 these roles that Montgomery Cares remains very much on the radar screen of the  
38 Commission on Health. We support establishing advisory board and recognize that  
39 certain qualifications as spelled out in the proposed bill are desirable. However, the  
40 Commission believes it should have a seat on this advisory board. The Commission on  
41 Health Chair or his or her designee as a liaison between the advisory board and the  
42 Commission would facilitate communication, provide more closely real-time input, and  
43 reduce duplications of effort between the advisory board and the Commission. The  
44 Commission as very interested stakeholder in Montgomery Cares and we would request



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1 that the Council increase the size of the board to include a seat for the Commission on  
2 Health, thank you.

3  
4 Council President Leventhal,  
5 Thank you, Mr. Moskowitz. Ms. Briggs.

6  
7 Diane Briggs,  
8 Diane Briggs, Executive Director Montgomery Medical Society. In two words, us too, Mr.  
9 President and Councilmembers. The Medical Society has been involved in care for  
10 uninsured low-income people throughout its 103-year history, things so closely involved  
11 with Safety Net Clinics and Primary Care Coalition. Importantly, I believe, Montgomery  
12 County Medical Society represents all physicians in this County: office-based, hospital-  
13 based, primary care doctors representing every specialty, Kaiser doctors, a great deal  
14 of free care is given right in the physician's office, outside of the Safety Net clinics. In  
15 fact, the Maryland Healthcare Commission just did a study of that and Montgomery  
16 County came out on the very high end of the amount of charity care that physicians give  
17 in the state. Above average at 9.6 hours a month and this is a low figure actually  
18 because it was a mandatory question so the people who chose not to answer that  
19 question got factored in as zero. So we just feel that because of our history -- long  
20 history with the uninsured and our activities providing care to them, and the fact that we  
21 represent all the physicians that we also would like to have a designated seat on the  
22 advisory board.

23  
24 Council President Leventhal,  
25 Thank you, Ms. Briggs. Arva Jackson.

26  
27 Arva Jackson,  
28 My name is Arva Jackson, I'm the Board Chair of the Primary Care Coalition of  
29 Montgomery County, Maryland. We had a meeting on January 10th of the board. There  
30 were 22 members present and we discussed the proposed legislation and we came to  
31 the following conclusions. The Primary Care Coalition is deeply appreciate of the  
32 interest and support of the County Executive and County Council with respect to  
33 increasing access to primary and preventive care for Montgomery County's low income,  
34 uninsured, and ethnically diverse residents. We understand that there's very few places  
35 in this country that first of all even recognize the problem and the consequences of not  
36 dealing with access to healthcare, and even fewer are actively proactively in the face of  
37 federal state inaction. We also appreciate the effort of the nonprofit community clinics,  
38 the County Medical Society, private practitioners, hospitals and community-based  
39 organizations that deliver and support the healthcare delivery process. And finally the  
40 Primary Care Coalition wants to acknowledge the innovative leadership and flexibility of  
41 the County's Department of Health and Human Services, led by Carolyn Colvin, Dr.  
42 Alder Tilman, who is in the audience, and their talented senior staff. Let me just say that  
43 the Primary Care Coalition supports the established of the Montgomery Cares Advisory  
44 Board. We had a study that came to the same conclusion 8 months ago. And we  
45 continue to recognize the community-wide responsibility for sustainable initiatives such



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1 as Montgomery Cares. We particularly appreciate the board inclusiveness, process  
2 transparency, and the participation of nationally recognized experts. We suggest the  
3 following potential enhancements to the legislation. One, we recommend that the  
4 Montgomery County Medical Society be represented on the advisory board. You just  
5 heard an impassioned plea on their behalf. We look at it and say private practitioners  
6 provide substantive amounts of healthcare... [beeping] No. ...to uninsured people and  
7 essentially all specialty care for community clinic patients.

8  
9 Council President Leventhal,  
10 Thank you, Doctor...is that it?

11  
12 Arva Jackson,

13 No. We recommend that the minority health initiatives be represented on the advisory  
14 board because Lincoln Clinic and community-based healthcare improvement efforts will  
15 lead to the improved County health status, and we believe the elimination of the health  
16 disparities is the complementary goal of increasing access, and for some, as you know,  
17 is the primary goal. We recommend the advisory board mission statement include  
18 ensuring high quality and efficient healthcare services be added. And we believe that if  
19 we're not going to be efficient, it's going to be very difficult to develop an orderly scale to  
20 get the universal access to healthcare for large numbers of people, which we're seeing  
21 represented in Montgomery County demographics. Particularly we believe that the  
22 Montgomery Cares...

23  
24 Council President Leventhal,  
25 Arva, you've got to bring it to a close.

26  
27 Arva Jackson,

28 ...I can do it in 30 seconds. We recommend that the Montgomery Cares contract with  
29 the advice and approval of the Department and the Advisory Committee Chair hire the  
30 appropriate staff to support the advisory board. We believe that this will provide historic  
31 continuity, recruitment flexibility, and loyalty to the Montgomery Cares initiatives, And  
32 although it was not explicitly stated in the proposed legislation we urge the Council to  
33 permit subject matter experts to serve on the Advisory Committee without regard to their  
34 membership on other boards or advisory committees directly or indirectly related to  
35 Montgomery Cares. And thank you for a chance to share these thoughts with you, and I  
36 gather from the rush that maybe there won't be any questions.

37  
38 Council President Leventhal,  
39 It's not a rush it's every witness has the same time limit. Do we have your written  
40 testimony?

41  
42 Arva Jackson,

43 So if there are questions I'll answer -- yes, it just hasn't been handed out.

44  
45 Council President Leventhal,



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1 Hasn't been handed out. Thank you. Okay, Dr. Garvey.

2  
3 Dr. Carol Garvey,

4 Good afternoon, I'm very excited and pleased about the advent of Montgomery Cares  
5 and that our elected officials and public agencies are grappling so creatively with an  
6 issue which the federal and state governments have ignored. The advisory board for  
7 Montgomery Cares could be a visionary group which moves the program forward. And  
8 we must assure that it not become an overly bureaucratic hurdle which impeded  
9 progress toward serving the 40,000 uninsured Montgomery County resident by 2010. I  
10 want to add my voice to others in support of the Medical Society being represented. The  
11 Medical Society was one of the founders of the Primary Care Coalition, the original  
12 home for several years of Project Access and a continuing partner in seeking to meet  
13 the needs of uninsured patients. I agree with Arva that membership in the stakeholder  
14 group such as a clinic, a hospital, or the Primary Care Coalition board should not  
15 disqualify a candidate from serving on the board as an expert, should the County  
16 Executive's office determine that such an expert is the best qualified applicant. I think a  
17 lot of expertise resides in our stakeholder groups. Article 24-52 (d) specifies that the  
18 Department must provide appropriate staff for the board.. I think assuring rapid selection  
19 of board support staff free of the bureaucratic entanglements involved in employment by  
20 Montgomery County government would be more readily achieved by having the support  
21 staff hired by the entity managed the delivery of services. So I would suggest that the  
22 article be amended to read "The Department will assure that appropriate staff is  
23 provided for the Board," rather than requiring the Department to provide the staff. And  
24 that gives the Department into input staff selection without involving the notoriously  
25 cumbersome County personnel system. Lastly, while it need not be written into the bill, I  
26 would suggest that a member of the County Council -- that the County Council plan to  
27 send a member of its own staff to the Montgomery Cares board meetings for at least the  
28 first year to enhance communication and understanding between the board and the  
29 Council. Thank you for the opportunity to testify.

30  
31 Council President Leventhal,

32 Okay, thank you. Ms. Granthon, I see you're at the table and you're eager to speak, but  
33 you're not actually...

34  
35 Myram Granthon,

36 I'm listed as number one and I think there was a typo...

37  
38 Council President Leventhal,

39 Oh, 'cause your name is crossed out on this list and substituted Dan Moskowitz..

40  
41 Myram Granthon,

42 ...it should have been representing the Latino Health Initiative. And I actually do have  
43 written testimony that I can hand in and I would like to just take a quick few minutes to  
44 read on the *Promadora*.





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1 Council President Leventhal,  
2 Go ahead.

3  
4 Myram Granthon,  
5 Okay I'll be quick. Again, providing testimony for [Rosalydia Fernandez] she's a  
6 [promadora] with the Latino Health Initiative and she was planning to attend but  
7 because work difficulties because of the timing of this public hearing she couldn't get  
8 out. First we want to thank you from the bottom of our heart for the interest shown to  
9 those with limited resources. through Montgomery Cares many people receive health  
10 services that would otherwise be unattainable. Thank you also for the opportunity to  
11 discuss the future of Montgomery Cares advisory committee. Montgomery Cares is  
12 extremely important to the health of our community. It worries us that some aspects of  
13 the legislation proposed for organization of the advisory will exclude key members from  
14 the community it serves, As you know, we help [promadoras] not only represent the  
15 group of interested people working within our community to improve their health, we are  
16 also the pulse of the community we serve. We are the connection between the  
17 community and the institutions that provide key services to the community. We receive  
18 complaints, listen to problems, and know what works. We share your interest and vision  
19 of improving the health outcomes of all communities. This is why we are surprised to  
20 see the advisory committee for Montgomery Cares will have such limited representation  
21 of the people it's aiming to serve. Of the 11 members comprising the committee only  
22 one -- only one is someone who uses or has used the services of Montgomery Cares  
23 provided. While it is necessary to have the presence of expert in the decision-making  
24 process, we believe it is equally important to include representatives from the users of  
25 these services because they are -- also provide valuable feedback and information. We  
26 are urging the Council to increase the current number of just one member to a minimum  
27 of five. The intent is to allow full participation from those who access health services  
28 provided by Montgomery Cares. Experience has shown us that programs are  
29 successful when they're involved in the decision -- programs are successful when they  
30 are involve in the decision-making process those who they are intended to serve.. It is  
31 of critical importance for the success of Montgomery Cares to systematically to involve  
32 persons such as myself in the decision-making process. Once again I thank you for the  
33 opportunity to speak on behalf of the Latino health communities I represent and for your  
34 interest in improving the health of community. *Muchas gracias*. Thank you.

35  
36 Council President Leventhal,  
37 Thank you. And could we get that in writing as well.

38  
39 Myram Granthon,  
40 [ INAUDIBLE ]

41  
42  
43 Council President Leventhal,  
44 And Joan, what is the date on which the HHS Committee will next act on this bill.



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1 Council Clerk,  
2 You're going to review it on Monday, January 23rd.

3  
4 Council President Leventhal,  
5 Okay, good. So at 2:00 p.m.

6  
7 Council Clerk,  
8 2:00 p.m. Number 2.

9  
10 Council President Leventhal,  
11 For anyone who is here who is interested and available Monday afternoon at 2:00 p.m.  
12 we'll be back here in this room to assess all of these recommendations. And, Joan, if  
13 you could, if we could, as we generally do, include everyone's testimony in the packet  
14 with a little summary so that we can consider all of these points as the HHS Committee  
15 takes up the bill. Mr. Silverman, you had a question?

16  
17 Councilmember Silverman,  
18 More of a comment, I wanted to thank Dan for coming as well as -- well, all of you -- but  
19 particularly with regard to the requests for additional positions in terms of the  
20 Commission on Health and the docs, We obviously can't run this system of Montgomery  
21 Cares without volunteer docs, so I think that makes sense. And we've got an  
22 outstanding Board of Health which I'm prepared to support amendments for both of  
23 those as well as other things that we've talked about here. So appreciate you're coming  
24 and testifying.

25  
26 Council President Leventhal,  
27 We not only have a outstanding Board of Health, which is us, we have an outstanding  
28 Commission of Health.

29  
30 Councilmember Silverman,  
31 Commission, you're right.

32  
33 Council President Leventhal,  
34 We are outstanding, no doubt about it.

35  
36 Councilmember Silverman,  
37 Forgot about that.

38  
39 Council President Leventhal,  
40 And so our next -- we have another panel on this bill. Pete Monge, is he here? And Ana  
41 Maria Izquierdo, is she here?

42  
43 Dr. Ana Maria Izquierdo-Porrera,  
44 Yes.



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1 Council President Leventhal,  
2 Great, please join us.

3  
4 Unidentified Speaker,  
5 [ INAUDIBLE ]

6  
7 Council President Leventhal,  
8 How are you doing, Ana Maria?

9  
10 Dr. Ana Maria Izquierdo-Porrera,  
11 [ INAUDIBLE ]

12  
13 Council President Leventhal,  
14 Okay.

15  
16 [laughter]

17  
18 Councilmember Silverman,  
19 Straight talk!

20  
21 Council President Leventhal,  
22 Okay, Mr. Monge.

23  
24 Peter Monge,  
25 Members of the Council, I represent the five...

26  
27 Council President Leventhal,  
28 State your name for the record because we've got this technology.

29  
30 Peter Monge,  
31 Peter Monge, and that's M-O-N-G-E. I'm the President and CEO of Montgomery General  
32 Hospital. Members of the Council, I represent the five community hospitals of  
33 Montgomery County. We're in agreement that the proposed bill supports the principle  
34 that Montgomery Cares is a Montgomery County program and any advisory board  
35 structure should reflect that. We recommend, however, that the County Executive  
36 appoint all members of the governing body using the usual methods for generating  
37 nominations and obtaining Council approval. We do not believe that subsets of  
38 interested parties should nominate board members. Although we are comfortable with  
39 the categories of appointments we would not distinguish among them with respect to  
40 terms, voting rights, et cetera. We also feel that the chair of the board should be  
41 appointed by the County Executive. Additionally we feel that dedicated staff assistance  
42 is imperative considering the complexity of what we're trying to accomplish. We believe  
43 the bill should articulate clearly the role of the entity that contracts with the Department  
44 to manage the delivery of services under the program. This entity should provide  
45 technical assistance and act as the fiscal intermediary for those provider organizations



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1 that do not have the ability to contract directly with the County. This entity would also be  
2 charged with expanding the ability of the community clinic system to serve the larger  
3 population targeted by the Montgomery Cares Program. The bill should also articulate a  
4 greater transparency for the reporting of information to program participants and County  
5 officials. Finally, the five hospitals reiterate our desire to move this important program  
6 forward. Providing care will make a significant difference to the welfare of low-income,  
7 uninsured residents in Montgomery County. We remain committed to our level of  
8 support as stated to the Council and the County Executive as in the past. And speaking  
9 just for myself, due to the critical nature of physician input, I believe all the hospitals  
10 would also support a representative of the Montgomery County Medical Society on the  
11 advisory board. Thank you.

12  
13 Council President Leventhal,  
14 Thank you very much. Ms. Izquierdo.

15  
16 Dr. Ana Maria Izquierdo-Porrera,  
17 [ INAUDIBLE ]

18  
19 Councilmember Praisner,  
20 Is your mic on?

21  
22 Dr. Ana Maria Izquierdo-Porrera,  
23 There you go, I'm Ana Izquierdo-Porrera, do you need me to spell it or you have it.

24  
25 Council President Leventhal,  
26 We've got it.

27  
28 Dr. Ana Maria Izquierdo-Porrera,  
29 I-Z-Q-U-I-E-R-D-O, hyphen, P-O-R-R-E-R-A I am the medical director of one of the  
30 Safety Network Clinics of Montgomery County, the Spanish Catholic Center, I am also a  
31 member of the Latino community, and a member of the Steering Committee of the  
32 Latino Health Initiative of Montgomery County. As has been stated before we first want  
33 to express our gratitude toward all those involved in increasing the resources for those  
34 who have none. Montgomery Cares will allow us to continue to provide the care for  
35 many people that need it and are unable to attain it. Thank you, also for inviting us to  
36 participate in the process that started a while ago to establish the future of the  
37 Montgomery Cares advisory board. Montgomery Cares is extremely important for the  
38 health of our community and for those we serve in our clinics. The proposed legislation  
39 has been thoroughly reviewed by representatives of Spanish Catholic Center and  
40 [Prieta Salud]. And we overall support its goal. However, there is some aspects of the  
41 legislation that concern us. In the proposed advisory board there's a heavy  
42 representation of experts in multiple fields and County representatives and a very weak  
43 representation of clinics and consumers. Since clinics and community members are  
44 going to be providing and receiving these services it is important that they are allowed  
45 to have a loud voice in the process. One of the aspects that has always been appealing



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1 about the collaboration with PCC and Montgomery Cares has been the combination of  
2 the attempt to create standardized procedures that are aimed at improving and  
3 providing the highest quality of care with the respect for the individuality of each clinic.  
4 This very important aspect of our collaboration will be lost if the voice of both clinics and  
5 members of the community is not represented properly in the board. Our specific  
6 requests for the Montgomery Cares advisory board is to increase to three members the  
7 number of representatives chosen from and by the clinics that would sit in the board for  
8 at least two years. Changing members every year won't allow for appropriate  
9 participation since it takes some time to get used to the functioning of a board. This  
10 would also allow an overlap between members that permits a better functioning of the  
11 overall board. Once again, thank you for the opportunity to speak on behalf of the clinics  
12 specifically Spanish Catholic Center, *Prieta Salud*, Mary Center, and lately Mobile Med.  
13 And we look forward to any future collaboration with Montgomery County.

14  
15 Council President Leventhal,  
16 Dr. Izquierdo, thank you very much. Let me say that we've -- the HHS Committee has  
17 already spent quite a bit of time working with the stakeholders on developing this  
18 legislation. I'm a little surprised, but pleased to see so much interest in -- from various  
19 aspects of the community in being represented on this board. And we will certainly --  
20 although we introduced this legislation after some discussion, we'll certainly take a fresh  
21 look at all of issues that have been raised today when we take up this bill on Monday  
22 afternoon. And we thank all of you for having such an intense interest in the governance  
23 of this very important program. Very glad to see all of you and thank you for coming.  
24 Agenda Item Number 11 is Expedited Bill 42-05, Minority Owned Business Purchasing  
25 Program Extension, which would extend the sunset date for the Minority Owned  
26 Business Purchasing Program, narrowly tailor the County's Minority Owned Business  
27 Purchasing Program to insured continued compliance with constitutional requirements,  
28 and generally amend the County's Minority Owned Business Purchasing Program. The  
29 Management and Fiscal Policy Committee is scheduled to take this up in a work  
30 session tentatively scheduled on January 23rd at 2:00 p.m. Persons who wish to submit  
31 additional information for the Council's consideration should do so by the close of  
32 business today. We have one witness, Marc Hansen, from the County Attorney's Office,  
33 representing the County Executive. Mr. Hansen, although I've just introduced you, you  
34 still need to state your name clearly for the record.

35  
36 Marc Hansen,  
37 My name is Marc Hansen, good afternoon. I'm here this afternoon to testify on behalf of  
38 the county executive in favor of Bill 42-05, Minority Owned Business Purchasing  
39 Program Extension. Bill 42-05 was introduced on December 6th at the request of the  
40 County Executive. This legislation would extend the MFD Procurement Program from its  
41 current sunset date of March 1st, to December 31, 2009. This legislation also proposes  
42 to expand the universe of County contracts subject to the MFD Procurement Mandatory  
43 Subcontracting Program from contracts valued at \$65,000 or more, to contracts valued  
44 at \$50,000 or more. The equal protection guarantees of the United States and Maryland  
45 Constitutions demand that race, national origin, gender conscious procurement



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1 programs like Montgomery County's must not be undertaken lightly. The United States  
2 Supreme Court has held that these race conscious procurement programs must be  
3 narrowly tailored to achieve a compelling government interest. Courts uniformly subject  
4 MFD programs to searching scrutiny in order to determine if the program is motivated  
5 by illegitimate notions of racial inferiority or simple racial politics. The Supreme Court  
6 has concluded so far that the only compelling present -- only compelling government  
7 interest that justifies a race conscious program is to remedy past or present  
8 discrimination by the government or its prime contractors. The courts therefore require  
9 that local governments first develop a strong basis in evidence establishing a pattern of  
10 discrimination as a predicate to implementing an MFD-type program and that any race  
11 conscious program adopted by the local government be narrowly tailored to address  
12 only the discrimination identified by the evidence relied on as a basis for adopting the  
13 program. Montgomery County has operated an MFD program since 1982. The program  
14 has been uniformly successful in meeting its goals for the last 23 years. In 2005 MFD  
15 programs received \$89.4 million in County contracts; an increase of over 100 percent  
16 since 1995. During that time frame the County has awarded 22 percent of its  
17 procurement contracts, more than \$500 million to MFD-owned firms. Despite this  
18 notable success a disparity study recently completed by Griffin and Strong indicates that  
19 a legal basis continues to exist that justifies an extension of the County's MFD Program.  
20 Bill 42-05 responds to the Griffin and Strong findings by extending the program until  
21 2009 and adjusting the parameters of the program to meet the constitutional  
22 requirement that these programs be narrowly tailored to remedy the affects of  
23 discrimination. Executive staff stands ready to work with Council and its staff in its  
24 review of this important legislation. If you have any questions, I will try to answer them.  
25 Thank you.

26  
27 Council President Leventhal,  
28 Thank you. Mrs. Praisner?

29  
30 Councilmember Praisner,  
31 Thank you. Marc, I have basically two questions. One relates to any kinds of comments  
32 you've received absent those that you've already perhaps shared with us or what kind of  
33 outreach there may have been on the Executive side. Whether it's through procurement  
34 or through the County Attorney's office or through the Department of Economic  
35 Development as far as outreach to explain the program and proposal. I want to make  
36 sure that as the MFP Committee proceeds to discuss the legislation that we have the  
37 benefit of knowing that the general public has an opportunity to understand what we're  
38 considering to see if they have any comments. So if you could share with Sonya any  
39 comments that anyone received about the legislation and also anything that you might  
40 lay out as far as the out reach effort for solicitation of input that the Executive branch  
41 has gone through it would be very helpful.

42  
43 Marc Hansen,  
44 Sure. I can certainly do that.



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1 Councilmember Praisner,  
2 Secondly, obviously we'll work through the legislation and have a chance to consider  
3 the issues. The one question that I think stands out in your testimony is as we think  
4 about the current legislation which has been in place for sometime and the dollar  
5 amount associated with contracts, it seems to be -- or we need to focus on the rationale  
6 for reducing the dollar threshold from \$65,000 to \$50,000 since what cost \$50,000  
7 before is probably valued at \$65,000 now. And so the suggestion usually is to keep in  
8 pace with inflation to increase threshold amounts or at least try to moderate them  
9 whereas you're reducing them.

10  
11 Marc Hansen,  
12 Correct.

13  
14 Councilmember Praisner,  
15 And I think we will need to within the Committee spend some time on that issue and  
16 also what the technical implications if any are -- technology, support, and et cetera --  
17 and the procurement issues of notifying folks about that what's the impact of doing that.  
18 Thank you.

19  
20 Marc Hansen,  
21 You're welcome.

22  
23 Council President Leventhal,  
24 Mr. Perez?

25  
26 Councilmember Perez,  
27 Thank you, Mr. President. I wanted to thank you Marc, and also Chuck Thompson and  
28 Doug Duncan for all of their work on this. This really is a critically important program and  
29 I appreciate the attention that you have given to it over the past year. I had a number of  
30 conversations with you and Mr. Thompson and the County Executive about this and you  
31 have really adhered to both the letter and spirit of the "amend it, don't end it" approach.  
32 So I'm confident that the disparity study and the tweaking that you have done will put us  
33 in a wonderful position in the unlikely event -- and I do emphasize unlikely -- but you  
34 always have to be prepared in case somebody challenges it -- you have really put us in  
35 a good position. And I'm equally confident that actually Ms. Praisner raised a good point  
36 regarding the 65 versus 50 but I think there's a pretty strong empirical basis that a  
37 number of minority owned firms having a lower threshold is going to increase the  
38 participation rates and I'm confident there's a strong empirical basis for that. So I do  
39 want to thank you for all your vigilant work, you have been really been absolutely on top  
40 of this and it really is a critical issue of making sure that every business has a level  
41 playing field to compete in Montgomery County.

42  
43 Council President Leventhal,  
44 Mrs. Praisner do you have anything else?



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1 Councilmember Praisner,

2 I'm sorry I had forgotten one other question that I had written on the legislation, not on  
3 the packet for your testimony. We also need to focus on the geographic area  
4 differences and the changes in geographic area as defined by tying it to the report  
5 rather than having a specific geographic area in the legislation. So the question that I  
6 have -- or the concern that I have is that seems to suggest that every report could  
7 modify the geographic area and I'm not sure how you can statistically evaluate year  
8 over year where your geographic areas could change in an annual report every year.  
9 And might raise questions of challenge in my view that the data would be called into  
10 question because you keep changing the geography. That's the major issue that I have  
11 a concern about.

12  
13 Marc Hansen,

14 We'll have to take a look at it, it was not the intent to change the geographic area year  
15 over year.

16  
17 Councilmember Praisner,

18 But it says "relevant geographic market areas determined by the most recent report the  
19 County Executive must submit to the Council" and that's an annual report, isn't it?

20  
21 Marc Hansen,

22 Which is the -- no, it was not meant to be the annual one, It is meant to be the four-year  
23 report.

24  
25 Councilmember Praisner,

26 Okay, then we need to fix that, because there is a report requirement annually by the  
27 CAO to the Council, so we need to fix that.

28  
29 Marc Hansen,

30 So we'll need to make clear that. Right.

31  
32 Councilmember Praisner,

33 Thank you.

34  
35 Councilmember Perez,

36 One quick thing, Mr. President, if I might. You have a pretty full plate already, but I have  
37 had some conversations with folks at WSSC that are going through a similar process  
38 right now. If you at some point could add to your already significant job description to  
39 have a conversation with them, because frankly I was very concerned with the direction  
40 that they were contemplating in their program as a result of the study that I thought had  
41 a number of methodological flaws. And I would certainly appreciate if you could have  
42 someone in your office if not yourself at least take a look at the study they've prepared.  
43 Because I'd rather address that now before they get so far ahead of themselves that  
44 we're in a rather unenviable position. Because I think when you review the report you'll  
45 have a better sense of the concerns that I believe we will both share. Thank you.





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1 Council President Leventhal,  
2 Okay thank you very much. We are now moving to Agenda Item 12 which is Zoning  
3 Text Amendment 05-21. It would allow a corporate training center as a permitted use in  
4 the CP -- that is the Commercial Office Park -- zone. Persons who wish to submit  
5 additional material for the Council's consideration should do so before the close of  
6 business on January 20th. The Planning, Housing, and Economic Development  
7 Committee work session is tentatively scheduled for January 26 at 9:30. Please call  
8 240-777-7900 to confirm. There is one speaker, Mr. David Phillips representing  
9 Lockheed Martin Corporation. Mr. Phillips, please state your name and address clearly  
10 for the record.  
11

12  
13 David Phillips,  
14 Good afternoon, I'm David Phillips at the Lockheed Martin Corporate Headquarters at  
15 6801 Rock Ledge Drive in Bethesda, 20817. I thank you for this opportunity to testify in  
16 support of Zoning Text Amendment 05-21 which would create a permitted use for a  
17 corporate training center in the CP Zone. This bill would enable Lockheed Martin to  
18 develop a world class training facility for its employees at its international headquarters  
19 in North Bethesda. The lease on our current training building expires in 2008 and does  
20 not meet our long-term goals. Employees who come from all over the world must now  
21 be shuttled back and forth to various hotels. These hotels are often crowded and do not  
22 meet per diem cost restrictions placed on us by our government customers. These  
23 factors compromise our ability to provide the most dynamic training experience. Also,  
24 because of the current training center's separate location, we have redundant costs for  
25 security and administration. Lockheed Martin is one of the United States' top ten  
26 companies for corporate training. We provide our employees with a full learning  
27 experience, educating them in leadership and management, inspiring their innovative  
28 spirit, and reinforcing the company's values of innovation and integrity. The new center  
29 for leadership excellence will provide a full employee experience that will integrate  
30 training, social collaboration interaction, and lodging that will be designed and  
31 programmed to endow leadership and innovation. Being adjacent to our corporate  
32 headquarters will allow our senior leadership to be more closely involved in the  
33 employee training experience. The new corporate training facility will be limited to use  
34 by our employees and business visitors and not available for use or rental by the  
35 general public. Lodging accommodations will prevent interruption of the training  
36 experience for shuttle trips and will minimize traffic in the area. We have a 26-acre site  
37 that has room for this project and we're preparing a site plan application now to be filed  
38 in early March for review by the Planning Board. As part of that process, we will meet  
39 with our corporate neighbors in Rock Spring Park and with residential community of  
40 Windemere across I-270 from our property. This new center will compare to those of  
41 companies such as Boeing, IBM, GE, 3M, Westinghouse, and others. The new facility  
42 along with the improved learning experience will help us attract and retain the best  
43 global employee base and enable us to remain as one of Montgomery County's and  
44 Maryland's largest employers. This facility will be a prominent example of Montgomery  
45 County's business environment. We're pleased that the Planning Board has



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1 recommended approval. We have talked with our hotel partners and they concur with  
2 the direction we're taking. We would ask that the Council make this Zoning Text  
3 Amendment effective immediately upon adoption so that we don't have to wait the 20  
4 days and thus delay the filing of our site plan amendment with the Planning Board. We  
5 hope that the Council will support this bill and look forward to answering whatever  
6 questions you may have. Thank you.

7  
8 [beeping]

9  
10 Council President Leventhal,  
11 Thank you you're right on time. Mrs. Praisner.

12  
13 Councilmember Praisner,  
14 Thank you, the Planning Board packet with the recommendations of the Planning Board  
15 has been given to Councilmembers but I gather no staff is here to testify. The  
16 comments that make are associated with removing the term "headquarters" such that it  
17 could be available to others and corporations with at least 500 employees. In other  
18 words coloring in the eye of the Eskimo. So I would be interested then in knowing from  
19 the Planning Board because their next comment is that there's a need for better  
20 methods of outreach to citizens and corporations that are potentially impacted by the  
21 zoning ordinance when we have the PHED Committee discussion, as drawn, it was  
22 more narrowly drawn as recommended by the Planning Board and could be obviously  
23 the CP Zone is not a broadly used zone. But taking out the 500 employees and the  
24 headquarters means there may be other communities impacted by the legislation. And  
25 having been asked to make it effective immediately I'd like to know the extent to which  
26 there are other implications with those kinds of requirements removed. And finally if you  
27 could -- the memo from the Planning Board indicates it was not a unanimous vote and  
28 the Vice Chair voted no. I'd like to have an understanding of the rationale of the Vice  
29 Chair in voting no -- it just says she dissented -- when we have the PHED Committee  
30 discussion. Thank you.

31  
32 David Phillips,  
33 Okay, thank you.

34  
35 Council President Leventhal,  
36 All right, thank you very much. There are no witnesses unless any are in the audience  
37 and are not listed for any of the remaining public hearings. I'm gonna just announce for  
38 the benefit of our television audience what those are on but I'm going to do them all  
39 seriatim. Agenda item 13 is a supplemental appropriation to the Montgomery College  
40 FY-06 capital budget and amendment to the FY-05 to 2010 CIP for the King Street Art  
41 Center in the amount of \$1,100,000. The Education Committee is tentatively scheduled  
42 for a work session on January 26 at 2:00 p.m. Anyone who wishes to submit additional  
43 information or the Council's consideration should do so by the close of business  
44 January 18th. Agenda item 14 is on a special appropriation to the FY-06 operating  
45 budget of the Montgomery County Fire and Rescue Service for the interim fire station in



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1 Clarksburg in the amount of \$1,940,260. The Public Safety Committee is tentatively  
2 scheduled for a work session on this special appropriation on January 26th at 9:30 in  
3 the morning. Persons who wish to submit additional information for the Council's  
4 consideration should do so by the close of business January 20th. Agenda item 15 is a  
5 public hearing on a supplemental appropriation to the FY-06 operating budget of the  
6 Homeland Security Department for a Homeland Security grant award in the amount of  
7 \$400,000. The Homeland Security Committee is tentatively scheduled to have a work  
8 session on this supplemental on January 30th at 2:00 p.m. Anyone who wishes to  
9 submit additional information for the Council's consideration should do so by the close  
10 of business January 20th. Agenda item 16 is a supplemental appropriation to the FY-06  
11 operating budget for Homeland Security grant awards to the Department of Police in the  
12 amount of \$298,550, to the Montgomery County Fire and Rescue Service in the amount  
13 of \$294,330 and to the Homeland Security Department in the amount of \$5,670. The  
14 Homeland Security Committee is scheduled to take this up on January 30 at 2:00 p.m.  
15 Anyone who wishes to submit additional information for the Council's consideration  
16 should do so by the close of business January 20th. Agenda item 17 is a supplemental  
17 appropriation to the FY-06 operating budget of the Montgomery County Public Schools  
18 for the field trip fund in the amount of \$600,000. Action is scheduled now. Agenda item  
19 17, Field Trip Fund \$600,000.

20  
21 Councilmember Floreen,  
22 I'll move approval.

23  
24 Councilmember Praisner,  
25 I'll second.

26  
27 Council President Leventhal,  
28 Okay, the source on this is charges for service. Okay. Is there discussion? Mrs.  
29 Praisner.

30  
31 Councilmember Praisner,  
32 No, my light was on on 15 and 16. And I just wanted to make a comment. Minna -- I  
33 want to first of all thank Minna for incorporating within the packet the questions that I  
34 asked at introduction. I think it's important when the public is logging on and getting  
35 packets for hearings as well as action items that the community sees the questions that  
36 have been asked through the discussion process. I am not a member of the Homeland  
37 Security Committee. But I have asked these questions. Some of them are repeat type of  
38 questions related to priorities of the County for spending money. Just because it's  
39 federal money doesn't mean we shouldn't know how they sit as far as priorities. I am not  
40 a member of the Committee though. So I need the answers to this information prior to  
41 and with enough time to be able to write any memos that I may have for the Homeland  
42 Security Committee. The rationale for asking them when this request was introduced  
43 was with an assumption that we might get the answers for the public hearing process.  
44 So since we aren't, I am again reiterating, Mr. Aoyagi and others, that I get this



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1 information sooner rather than later so that the Homeland Security Committee can have  
2 my comments prior to their action.

3  
4 Minna Davidson,

5 And we have requested that information in advance of the Committee.

6  
7 Councilmember Praisner,

8 Thank you, Minna.

9  
10 Council President Leventhal,

11 Okay, we're back on amendment item 17. The motion has been made and seconded to  
12 approve supplemental appropriation of \$600,000 with the source being charges for  
13 service. Those in favor will signify by raising their hands. Any opposed? It is unanimous  
14 among those present. That will take us to Agenda Item 18, which is a supplemental  
15 appropriation to the FY-06 operating budget of the Department of Health and Human  
16 Services for the Crossroads Youth Community Opportunity Center in the amount of  
17 \$264,600. The Health and Human Services Committee will take this up on January 23rd  
18 at 2:00 p.m. Anyone who has additional information should submit it by the close of  
19 business today. The source is a federal grant but we're acting on this later. HHS  
20 Committee is taking this up on Monday. Agenda Item Number 19 is a supplemental  
21 appropriation to the FY-06 operating budget of the Police Department for the Homeland  
22 Security Grant Award in the amount of \$1 million. The Homeland Security Committee is  
23 scheduled to take this up on January 30th at 2:00 p.m. Anyone with additional  
24 information from the Council to consider should submit it by close of business January  
25 20th. Mrs. Praisner.

26  
27 Councilmember Praisner,

28 Ditto. Same question.

29  
30 Council President Leventhal,

31 Agenda items 20, 21, and 22 regarding a special appropriation to the Maryland Park  
32 and Planning Commission FY-06 capital budget and an amendment to the FY-05-10  
33 capital improvements program \$400,000 for acquisition local parks, a special  
34 appropriation to County government's FY-06 capital budget \$1,921,000 for acquisition  
35 nonlocal parks, and amendment to M-NCPPC's FY-05-10 CIP of \$1,921,000 for  
36 acquisition nonlocal parks. We are going to act on this following the hearing. Which is  
37 already over. There are no speakers. Mrs. Praisner has a question.

38  
39 Councilmember Praisner,

40 No I just want to comment that I'd like a tracking account related to what the governor  
41 may now be proposing as far as program open space money, since my understanding  
42 is his budget will incorporate all of the money in the Program Open Space, not the kinds  
43 of reductions. I know some of that is state not County, Program Open Space, but it  
44 would be helpful for us to continue to track that issue as it goes through Annapolis as  
45 well. Do you want an action on this now, Mr. Leventhal?



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1  
2 Council President Leventhal,  
3 We are...

4  
5 Councilmember Praisner,  
6 I'll move approval. Okay. Motion has been made and seconded. Chairman Silverman.

7  
8 Councilmember Silverman,  
9 Thanks. I see Chairman Berlage is here. But my question was so we're putting this  
10 money into acquisition for local parks and then nonlocal parks, is that correct?

11  
12 Marlene Michaelson,  
13 That's correct.

14  
15 Councilmember Silverman,  
16 And -- wait a minute. And -- right. Okay. So help me understand. We received a little  
17 over \$4 million more than was anticipated?

18  
19 Marlene Michaelson,  
20 No. It's \$400,000 plus the \$1.9 million.

21  
22 Councilmember Silverman,  
23 Why does it say...

24  
25 Marlene Michaelson,  
26 You see two separate actions on the \$1.9 because on nonlocal parks it's in the County  
27 government's capital budget, but in Park and Planning's CIP. But the total is \$1.9 million  
28 for nonlocal parks.

29  
30 Councilmember Silverman,  
31 Okay, so why does Derick's letter say \$4 million? This is on Circle one. It says 75  
32 percent of the \$4,062,811 will be used to acquire nonlocal park land.

33  
34 Bill Greece,  
35 Mr. Silverman, if I may answer. My name is Bill Greece with Park and Planning  
36 Commission, may I answer?

37  
38 Councilmember Silverman,  
39 Yes, you are.

40  
41 Bill Greece,  
42 The difference is that when we adopted the FY-05/10 CIP we had an appropriation in  
43 there that represented POS money. After our budget was adopted then the state's  
44 budget for FY-05 was adopted which included more money than what we were  
45 expecting, because we had a good year last year in terms of what our legislators got



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1 back -- actually across the state for local jurisdictions under program open space. So we  
2 had submitted a budget based on '04's allocation in '05 anticipating that same level of  
3 funding. Turned out that in '06 there was more money made available to us. So in order  
4 to have authority to spend it we need to do this amendment .

5  
6 Marlene Michaelson,  
7 So I think what you are saying is the \$4 million is the total we had already  
8 acknowledged receiving and appropriate rated plus this supplemental; it's combination,  
9 is that correct?

10  
11 Bill Greece,  
12 Yes.

13  
14 Councilmember Silverman,  
15 All right at the risk of asking another question... So this is additional money that we got  
16 from the state?

17  
18 Bill Greece,  
19 That is correct...

20  
21 Councilmember Silverman,  
22 And did you all make some determination as to how that money should be allocated?  
23 Because what I don't see in here is an allocation for Legacy Open Space.

24  
25 Bill Greece,  
26 We didn't make an allocation.

27  
28 Councilmember Silverman,  
29 And I say this against the back drop of Uncle Tom's Cabin and the Kensington Circle.  
30 Both of which are significant obligations.

31  
32 Bill Greece,  
33 And legacy open space sites, right. We didn't amend either of those PDFs because we  
34 had no program open space money in those PDFs for the legacy open space program.  
35 Legacy Open Space is funded by either Commission bonds, County bonds, or current  
36 receipts.

37  
38 Councilmember Silverman,  
39 Are you telling me that we don't fund -- we don't have any program open space dollars  
40 in our Legacy Open Space program.

41  
42 Bill Greece,  
43 That is correct. That's what I'm telling you.

44  
45 Councilmember Silverman,



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1 Are we precluded from doing that?

2  
3 Bill Greece,

4 I don't think we are, we just haven't done it. We've been using program open space to  
5 help fund our local and nonlocal parks.

6  
7 Councilmember Silverman,

8 I guess what I am raising is the following. I want to understand, speaking of tracking, I  
9 want to understand if we got additional state dollars that were not anticipated, it seems  
10 like you are saying to us that the place you want us to approve putting that into is  
11 acquisition local parks and acquisition nonlocal parks. And I'm raising the question since  
12 this is here for, you know, in affect for public hearing and action without going to  
13 Committee, why aren't we having a discussion about whether this is the right place  
14 these moneys should be going or whether we ought to have a PDF for  
15 Legacy Open Space. Or are you saying it doesn't matter we can -- all these moneys can  
16 be moved around. They can't be moved around.

17  
18 Marlene Michaelson,

19 Well not moved around but I think you could argue that an acquisition that is Legacy  
20 Open Space could in fact be funded through some of the money in one of these PDFs.

21  
22 Councilmember Silverman,

23 I guess that's my question. Is do you believe you have legal authority to use none local  
24 park moneys in a PDF which talks about -- doesn't say anything about legacy open  
25 space. Can you use that for what we have traditionally called legacy open space  
26 programs? I mean I'm reading...

27  
28 Derick Berlage,

29 The answer is yes we could. We sent this request to the Council. The Council decides  
30 how to handle it. And it has been handled in this way and it's coming before you today  
31 and this is your opportunity to...

32  
33 Marlene Michaelson,

34 Mr. Silverman at that time the open legacy space was created the Council stated a  
35 policy -- or the Planning Board articulated a policy which you supported that legacy  
36 open space was going to be above and beyond the moneys that you had traditionally  
37 allocated to parks, which is why when it was set up you did not put POS dollars into the  
38 legacy, but that doesn't mean you can't change it.

39  
40 Councilmember Silverman,

41 But the legacy open space dollars are supposed to come from a certain amount of  
42 County money and I believe we were very specific about non-County money.

43  
44 Marlene Michaelson,

45 That is correct.



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1  
2 Councilmember Silverman,  
3 Meaning the state government, federal government, private sector, et cetera.

4  
5 Marlene Michaelson,  
6 No question there was an expectation of contributions, so in theory you could use...

7  
8 Councilmember Silverman,  
9 I guess what I'm -- I'm sorry, I'm not trying to make more of this than it is. I am trying to  
10 understand since we are being asked to appropriate these moneys whether since we've  
11 had no discussion about the status of legacy open space except in effect to give the nod  
12 to going ahead with Uncle Tom's Cabin and going ahead with the Kensington Circle.  
13 whether as a result of those decisions, and if I understand what we did yesterday, Mr.  
14 Chairman, that's a million bucks for Uncle Tom's Cabin. And the deal...

15  
16 Derick Berlage,  
17 They're also seeking state assistance on that...

18  
19 Councilmember Silverman,  
20 Right, and the deal at the Circle is, is it \$2 million in the first year?

21  
22 Bill Greece,  
23 Yes, it was \$2 million or \$1.2 in the first year, and then it'll spread out over three years,  
24 but that's all funded with nonlocal -- I mean with County bond money or County current  
25 receipt money.

26  
27 Councilmember Silverman,  
28 Okay. I'm just concerned about whether those pieces are going to end up resulting in  
29 your coming back to us saying we have the following five more things we want to do  
30 that requires more legacy open space money, because, quote, "We're out of it." Or  
31 we're out of it for the next year. And meanwhile we will have just gone ahead and  
32 approved these in funds for nonlocal parks which traditionally have not been used to  
33 acquire what we call legacy open space projects.

34  
35 Bill Greece,  
36 I believe we're very comfortable with the amount of money that's gonna be available in  
37 legacy open space after Kensington is acquired that we won't have to come back to you  
38 and say we're running short here. I really feel very comfortable about that.

39  
40 Marlene Michaelson,  
41 And I don't think there would be a problem if you found a legacy space property and  
42 there was funding in the acquisition nonlocal park...

43  
44 Councilmember Silverman,  
45 Yes, if they hadn't already spent it.





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1  
2 Marlene Michaelson,  
3 ...to use it, right.

4  
5 Councilmember Silverman,  
6 Right if they hadn't already spent it on other acquisitions. I mean these are all good  
7 things. I'm not trying to criticize them. I'm just saying, you know, when we get additional  
8 dollars in, the question is are we having a discussion about where the dollars are going  
9 to go within the pots of expenditures that you have available. Or do we just basically  
10 say, "Well, it's great we got a couple million dollars more, here it is you figure out where  
11 you want to spend it. So anyway keep doing a great job. We'll end up dealing -- I mean  
12 I'm satisfied we'll end up dealing with this at whatever point we have to.

13  
14 Bill Greece,  
15 Thank you.

16  
17 Council President Leventhal,  
18 Okay, I know Mrs. Lorraine wants to speak I want to let you know, Mr. Greece, I am  
19 gonna of ahead and vote for the special appropriation even though you described the  
20 CIP as going from 06 to '010. I am the Council President and I want Glenn Orlin to know  
21 that every time someone uses the phrase "010" they're going to be charged \$10  
22 payable to the Montgomery Parks Foundation. [ laughter ]

23  
24 Bill Greece,  
25 All right.

26  
27 Council President Leventhal,  
28 Councilwoman Floreen.

29  
30 [ laughter ]

31  
32 Bill Greece,  
33 "0-10", yeah!

34  
35 Councilmember Floreen,  
36 Thank you, Mr. President. I'm glad that that math error has been identified and I look  
37 forward to your catching further ones in this process. Steve's comments just raised a  
38 question for me is -- and the last comment is we'll deal with this whenever we get it to it.  
39 Why don't we schedule it for a conversation? I honestly don't have a good sense of  
40 what the priorities are. I know we are on your backs on a regular basis to acquire things,  
41 but I don't see it articulated in the PDFs. What the precise priorities are going to be at  
42 this time, Bill.

43  
44 Bill Greece,  
45 Well, we can do that.



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1  
2 Councilmember Floreen,  
3 I mean I'm not saying we do it now. But do we have to act on this today?

4  
5 Bill Greece,  
6 Well, it will allow us to spend money out of this fund as soon as you approve it.

7  
8 Councilmember Floreen,  
9 It will allow you to write the check. We're not gonna not approve the dollar amounts. The  
10 question is understanding what the priorities are in terms of the allocation of these  
11 dollars. I honestly just you know having something without anybody here really to testify  
12 on -- for or agin' it and then being asked to make a decision and then having people  
13 raise some questions about how the priorities are allocated seems to me that it's worth  
14 some conversation. I don't think that the PHED Committee, Mr. Chair, has really taken  
15 this up apart from in the CIP conversation. But the policy issues that were alluded to I  
16 think they're before my time in terms of the priorities of how you deal with additional  
17 dollars. So I would request that we put it on the PHED Committee's agenda at the  
18 earliest opportunity just to have a talk about the allocation choice in a little more detail. I  
19 fully support the initiative. I am just trying to understand is there any urgency to this? I  
20 know for some reason we got it in November and now we have it today. I guess it got...

21  
22 Bill Greece,  
23 Well, the only reason it was delayed was I guess was because of holidays that came in  
24 between when it was first presented and today. But I guess we can defer it if you're  
25 interested in having us come back to your Committee.

26  
27 Councilmember Floreen,  
28 Well I'd ask my colleagues if we couldn't do that so we could understand the allocation  
29 of dollars and understand what that means in terms of the various priorities we've heard  
30 from various communities on it too.

31  
32 Bill Greece,  
33 The same question of priorities came up when we were working through the CIP for the  
34 next go around by the Planning Board. Saying to me you know what are our priorities. I  
35 said we'll we don't have a lot of conflicting priorities right now. Much of our acquisition is  
36 based on opportunity purchases and we make those such as Uncle Tom's Cabin when  
37 the opportunities present themselves. As a matter of fact in the years I've been working  
38 with Park and Planning I don't think I've ever had to go to the Planning Board and say to  
39 them which one is it, "A" or "B"? We've always been in a position...

40  
41 Derick Berlage,  
42 These are all acquisitions the Council has endorsed in some way.

43  
44 Councilmember Floreen,



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1 Well and you've always demonstrated exquisite talent in figuring out a way to acquire  
2 properties over time with different kinds of payment arrangements. And I certainly value  
3 that. I am just -- it seems that it might be useful before we get into the budget to  
4 understand what these current guiding principles are. And as we gear up for the next  
5 time around.

6  
7 Bill Greece,  
8 I can do that.

9  
10 Councilmember Floreen,  
11 So, Mr. President, I would request that we just defer this until the PHED Committee has  
12 had a chance to have this conversation with little more detail.

13  
14 Council President Leventhal,  
15 I heard that request and I've been conferring with other colleagues. It doesn't seem to  
16 be the sentiment.

17  
18 Councilmember Silverman,  
19 I sort of started out that way, Nancy, but that's not where...

20  
21 Councilmember Floreen,  
22 You convinced me.

23  
24 Councilmember Silverman,  
25 But that's not where I am now. I think we can have a -- the broader discussion during  
26 the discussion about the capital budget. And I'm confident that if the Council decides --  
27 let me be blunt. This is not like the school system. Once you give the money...

28  
29 Councilmember Floreen,  
30 I know nothing about the school system.

31  
32 Councilmember Silverman,  
33 I was gonna say this in a positive way. At least about one agency. Which is if we give  
34 the school system money it's spent before the ink is dry. Because that's what they do.

35  
36 Unidentified Speaker,  
37 Usually spent before the request is made.

38  
39 Councilmember Silverman,  
40 That's true. But in this case what I am hearing from the Chair and from Bill is that we will  
41 have an opportunity to work through these priorities specifically since we're taking up  
42 the capital budget so...

43  
44 Marlene Michaelson,  
45 February 9th.



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1  
2 Councilmember Silverman,  
3 February 9th, so we'll be able to actually have that discussion.  
4

5 Councilmember Floreen,  
6 Oh, it's that soon? Okay.  
7

8 Councilmember Silverman,  
9 Right, so this is -- we'll deal with it in Committee in that context.  
10

11 Councilmember Floreen,  
12 I didn't realize it was...  
13

14 Councilmember Silverman,  
15 Yeah. Yeah.  
16

17 Council President Leventhal,  
18 Okay, so we're gonna act. I think did we have a motion on this already. The motion was  
19 made and seconded. So those in favor of the appropriations for acquisitions in the parks  
20 will signify by raising their hands? Any opposed will signify by raising their hands. It  
21 passes unanimously. Agenda Item 23 is a supplemental appropriation to the FY-06  
22 operating budget of the non-departmental account for future federal, state, other grants  
23 in the amount of \$8 million. The source is federal, state, or other grants. That's about  
24 the vaguest thing I've ever heard.  
25

26 Councilmember Praisner,  
27 Let me explain.  
28

29 Council President Leventhal,  
30 You don't need to explain it at length.  
31

32 Councilmember Praisner,  
33 No, I don't have to explain it at length. In order to spend money that comes in from  
34 grants you have to have the authority to have that appropriation. What we do is we  
35 assume or try to make an estimate of how much money it's going to be and do that  
36 appropriation dollar amount hoping the money will come in. What's happened is more  
37 money has come in than they have appropriation that's already for. So we're upping the  
38 authority in order to allow us to use the money we're getting. I'll move approval.  
39

40 Council President Leventhal,  
41 Okay.  
42

43 Councilmember Silverman,  
44 Second.  
45



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1 Council President Leventhal,  
2 Motion is made and seconded, those in favor will signify by raising their hands... any  
3 opposed will raise their hands. It passes unanimously. Agenda item 24 is a  
4 supplemental appropriation to the FY-06 operating budget of Montgomery County  
5 Public Schools for the provision for future supported projects in the amount of  
6 \$10,550,000. There are no witnesses. The source is federal and state grants. Is there a  
7 motion?

8  
9 Councilmember Denis,  
10 I'll make the motion.

11  
12 Councilmember Praisner,  
13 Second.

14  
15 Council President Leventhal,  
16 The motion is made and seconded. Those in favor will signify by raising their hands.  
17 Any opposed? The motion passes unanimously. That concludes the public hearing. We  
18 are now moving to the Shady Grove master plan.

19  
20 Multiple Speakers,  
21 [ INAUDIBLE ]

22  
23 Council President Leventhal,  
24 Okay, we are on the Shady Grove master plan. We had a work session on -- several  
25 lengthy work sessions on Shady Grove master plan prior to the holidays. Marlene, I  
26 think it might serve us best if you could just explain...

27  
28 Councilmember Silverman,  
29 Tell us where Shady Grove is.

30  
31 [ laughter ]

32  
33 Councilmember Praisner,  
34 Tell us where we are.

35  
36 Council President Leventhal,  
37 ...explain very briefly how you have crafted the resolution to conform to the directives  
38 you were given by the Council, and I expect there are will questions and some potential  
39 amendments, I've got some myself and others may as well.

40  
41 Marlene Michaelson,  
42 Yes, and I have some corrections as well.

43  
44 Council President Leventhal,  
45 Why don't you let us know what you have done for us.

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Marlene Michaelson,

Okay, great. As you know the Council met in November and went through the plan. That wasn't your first meeting as you indicated you had several, but in November you tentatively voted on the plan. and what staff does after that is to try to craft a resolution which reflects what we think you have said. Because sometimes that's subject to interpretation the draft resolution is very widely circulated to Councilmembers, property owners, civic activists, and we request their comments on the resolution. Anything which in my mind is consistent with your intent and improves the clarity of the resolution we add. In some cases we did receive recommendations for changes to the resolution which were directly contrary to your vote, so obviously they're not in here. And so we did take all of those comments on work on it. I would like to note a few a few technical corrections to the resolution and also note that the Councilmembers should have gotten a new draft of the TOMX zone, because inadvertently the packet you had had the wrong draft, not the final draft. The technical corrections I want to highlight are first on the descriptions related to the Casey 6 property. There was a limit of 130 units and the plan indicated that since the site was constrained that that would be the total limit on the density. However, what we need to do to clarify this and to clarify that we were not in fact suggesting that bonus densities otherwise allowed under law would not be allowed is that the 130 units needs to be the total bonus density, and the base density needs to be 106 units. This is on Circle 17 of the plan. You'll see that it shows on Casey 6 that both the base density and the density with bonus units are the same number. So we would be amending that to keep the bonus density at 130 units and to amend the base density to be 106 units. And wherever there are other references throughout the resolution to those numbers they would also change accordingly and there are a come other locations where that's referenced. The other change that I wanted to recommend is that on Circle 39 it discusses the implementation plan. And elsewhere in the resolution it indicates that the implementation plan should be prepared prior to rezoning and for consistency we believe it's important to here as well reference that the implementation plan should be completed prior to the sectional map amendment. I did want to highlight a few issues that are described at the beginning of memo and I'll take you through those if you're prepared to go there. The first is that several Councilmembers had numerous questions about the relocation of the County Service Park. We do have some information from the County Executive which addresses your questions. There's also additional language in the resolution which appears on Circles 44-45 which more carefully discuss the fact that different options will be considered for relocation. That the plan in no way is predetermining where any of the facilities will be located. It indicates that a variety of different facilities will be looked at. And then on Circle 45 it talks about things that must be done before the Council will approve a CIP project to relocate one or more of the facilities. It discusses the public participation process. A very complete analysis of all alternatives with a thorough assessment of the cost and benefits of each and the Council specifically asked that that language be included in the resolution.

Council President Leventhal,



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1 We did and I did and I appreciate this language and I support it. Given that the County  
2 Executive has now stated his view that the Webb Tract Air Park north site is not an  
3 appropriate relocation site for the MCPS Bus Depot I'd like to suggest that we state that  
4 since that is consistent with the County Executive's view and it I think would provide  
5 further comfort to the affected community there with respect to the potential of 400  
6 school buses. So I'd like to offer if I can get a second...

7  
8 Councilmember Silverman,  
9 Second.

10  
11 Council President Leventhal,  
12 ...language that would state it is the Council's understanding that the Webb Tract site is  
13 not a suitable location for relocation of the MCPS School Bus Depot. Did you want to  
14 comment on it.

15  
16 Karen Kumm Morris,  
17 Yes we'd like to have -- for the record this is Karen Kumm, lead planner Shady Grove --  
18 we'd like to have Montgomery County Parks -- Public Schools comment on that  
19 because it's been our understanding that it's actually in the public -- it's a benefit to the  
20 public to have some buses possibly up at the Webb Tract and we need to have  
21 decentralized buses in the relocation of the centralized bus depot at Shady Grove. So...

22  
23 Council President Leventhal,  
24 Is MCPS represented here?

25  
26 John Matthews,  
27 Yes. I'm John Matthews, Director of Transportation for Montgomery County Schools.  
28 And I'd just like to comment, it's never really been our desire to have the lock, stock,  
29 and barrel operation at Shady Grove at Crabbs Branch Way moved to the Webb Tract.  
30 What we seek instead is really to move our facilities into different locations and divide  
31 them up. It doesn't work well for us to have our buses housed en mass. 400 buses is  
32 about what we have at Shady Grove right now. And it really works better for us to have  
33 smaller depots located in the communities where they serve. Shady Grove right now  
34 serves six primary high school districts ranging from Watkins Mill to Gaithersburg,  
35 Magruder, Wooten, Rockville, Richard Montgomery, and it works better for us to try to  
36 divide that up. The site at the Webb Tract, for instance could house the buss that serve  
37 the communities in the immediate vicinity along Snouffer School Road, Quince Orchard  
38 High School, for example, Gaithersburg High School, and potentially Magruder High  
39 School. Then the remaining buses, alternate sites would be sought to house those  
40 buses in those communities or near those communities. That saves us operating costs  
41 for deadhead mileage, it reduces the impact on traffic because it reduces the amount of  
42 miles traveled the busses would have to travel. It also allows us to have a more  
43 reasonably sized depot. So it really isn't in our interest to have a large facility like we  
44 have at Shady Grove. Right now we have -- Shady Grove, Clarksburg, and Bethesda  
45 depots operating at about 190% capacity. And obviously we need to do something. And



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1 eliminating the Webb Tract from consideration all together I think would not be in our  
2 best interest and potentially not in the public's best interest.

3  
4 Council President Leventhal,  
5 Mrs. Praisner?

6  
7 Councilmember Praisner,  
8 Well, I'm not sure where the motion goes or what, you know, its relationship to the  
9 Shady Grove master plan from a standpoint of making a statement that the Webb Tract  
10 will not be used for a School Bus Depot just because County Executive has said that. I  
11 think that that is certainly some information as we go through whatever processes. But  
12 with all due respect to the County's Executive, I don't think it's dispositive on any issue  
13 to have his view at this point in the process. And as the school system indicated,  
14 although the discussion has been for the school facilities, bus depot facility, or the  
15 assumptions that it would be moved in total to the Webb Tract, that is not necessarily  
16 what MCPS may consider. So I could not support a motion that says the Webb Tract is  
17 not -- needs to be taken off the table at this point. And I don't understand its position  
18 within the Shady Grove master plan since we've talked about making decisions in the  
19 Shady Grove master plan associated with the ultimate zoning and land use not with the  
20 disposition of public facilities.

21  
22 Council President Leventhal,  
23 Ms. Floreen?

24  
25 Councilmember Floreen,  
26 Thank you. Mr. Matthews -- I'll just say this. I have repeatedly said to folks in the  
27 Montgomery Village Community that this debate is really with the school system. If it is.  
28 And I didn't know if you had any community meetings about what you might be planning  
29 in terms of relocating school buses generally?

30  
31 John Matthews,  
32 Well, we have not held community meetings, but then we're actually reacting to the  
33 request to move. So those meetings have been held in different forums and different  
34 discussions I'm sure have taken place about receiving buses.

35  
36 Councilmember Floreen,  
37 There's been a lot of talk about you guys, but you haven't been at the table at all.

38  
39 John Matthews,  
40 No, but there has been work going on with my office and the Park and Planning folks to  
41 find alternate locations that would be suitable for bus parking. So we've considered a  
42 variety of different places including the landfill at Goudy Drive and a number of other  
43 places that might serve our needs as well. However, none of those places really are  
44 large enough or desirable from our perspective to move us lock, stock, and barrel from





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1 Crabbs Branch Way to one of those sites. So what we prefer to look at is an alternate  
2 that moves what we have at Shady Grove to several different locations.

3  
4 Councilmember Floreen,

5 Do you have any sense of what the magnitude of activity would be in a less  
6 consolidated effort, in a decentralized effort up there?

7  
8 John Matthews,

9 Well, you know, all things considered, we don't know what the outcome might be so it's  
10 hard to weigh what the magnitude will be. But what I should say just for a point of  
11 reference is that if you located some of our buses at the Webb Tract it would be very  
12 close for those buses to operate to Montgomery Village and serve the high school,  
13 middle school, elementaries in that area. Magruder High School is just a mile or two  
14 down the road. Then the Gaithersburg High School area, which includes the  
15 Laytonsville area and whatnot, is also very close by. So it actually reduced the  
16 deadhead or the amount of travel between the depot and where their first pick ups and  
17 the schools are that they serve. So there would be a public benefit to that in reduced  
18 fuel consumption, air pollution, as well as cost to the County.

19  
20 Councilmember Floreen,

21 Or time -- or actual trips on the road.

22  
23 John Matthews,

24 Yes, exactly. It would reduce the number of trips, right.

25  
26 Councilmember Floreen,

27 What is the school system's timing in terms of resolving how it thinks about this?

28  
29 John Matthews,

30 I'm not sure I'm the right person to ask because the facility folks really do manage this  
31 for us. I believe that we're subject to whatever comes down the road at this point  
32 because we're not leading the charge on this. We're really responding to it.

33  
34 Councilmember Floreen,

35 So once a decision was made about your presence at Shady Grove then you would  
36 initiate a planning process to fund these alternate locations?

37  
38 John Matthews,

39 We've sought help already from knowing that it's likely we would move from this location  
40 and others as well. We've sought help from the Park and Planning folks to identify  
41 suitable sites. So our facilities folks are working with the Park and Planning folks to try  
42 to identify sites and see which ones are worthy of pursuit.

43  
44 Councilmember Floreen,

45 You said you have about 400 buses at Shady Grove?



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1  
2 John Matthews,  
3 Currently, yes.  
4

5 Councilmember Floreen,  
6 And I think I asked you this and perhaps you don't know. Do you have any sense of how  
7 many buses might be located at the Webb Tract under a decentralized approach?  
8

9 John Matthews,  
10 Probably something on the order of half of that. Maybe even less depending on what  
11 the other options are. One of the things that governs what the number of buses is where  
12 the other sites are that identified that we might move to. So each one has its own  
13 particular set of numbers that follow. And so I would say something -- right now there  
14 are currently six primary high school districts that are served by Shady Grove. If we  
15 were to assume that we would serve Watkins Mill, Magruder, and Gaithersburg from the  
16 Webb Tract it would be half of what we have at Shady Grove. We may not want to  
17 include Gaithersburg. We might have a site -- you know, at the Casey tract for example  
18 -- and please that's just for point of discussion.  
19

20 Councilmember Floreen,  
21 Conceptual.  
22

23 John Matthews,  
24 Right, don't assume that would be the case by any means. That would mean that's  
25 actually closer to the Gaithersburg site and we might want to locate those buses there.  
26 So each picture that we paint draws a different set of numbers to go along with it.  
27

28 Councilmember Floreen,  
29 And probably a different set of community reactions I would think.  
30

31 John Matthews,  
32 The community reaction is pretty similar. It's hard to find...  
33

34 Councilmember Floreen,  
35 Wherever you go.  
36

37 John Matthews,  
38 Wherever we go, right. It's hard to find a place that we're welcomed with open arms  
39 because there are many things associated with our operation that seem to be distasteful  
40 to communities. But the reality is the hard decision for the Council is going to be the  
41 service we have to provide where can we best do that? I recognize how difficult that is,  
42 but we just can't put the buses in a hole some place and have them magically appear  
43 and that's what the problem is.  
44

45 Councilmember Floreen,



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1 Indeed. Thank you.

2  
3 Council President Leventhal,

4 I am gonna have some comments but I'll call on Mr. Andrews first.

5  
6 Councilmember Andrews,

7 What's your sense of the economies of scale in terms of what is the number of buses  
8 that you need in one place to have it be an efficient operation?

9  
10 John Matthews,

11 Typically 150-300 buses our best range. Right around 225 really is the ideal number.

12 When we start to get beyond that we have issues getting -- just simple things like  
13 getting out of our facility in the morning. You can only drive so many buses out of the  
14 driveway and get into the operating roadways at one time. And if you only have one  
15 driveway and you have 400 buses trying to leave versus 200 buses obviously it creates  
16 traffic issues just on our own site.

17  
18 Karen Kumm Morris,

19 I think what the Council needs to again focus on is that this Shady Grove plan is not  
20 trying to predetermine where we should relocate all these facilities, but we are saying it  
21 should be multiple sites. And if you wish you could say that the whole County Service  
22 Park should not move lock, stock, and barrel to the Webb Tract. That would be a  
23 position that certainly is consistent with what we're trying to do here. We're trying to  
24 decentralize the facilities so that we can get them to have a better public sector  
25 improvement, put facilities where they have less travel time, less travel costs involved,  
26 fuel cost.

27  
28 Council President Leventhal,

29 I am always grateful to hear what the planning staff is trying to do. It will actually be the  
30 County Council that will act on this master plan. Are there any other comments on this  
31 motion?

32  
33 Lisa Rother,

34 I wanted to make a comment if possible.

35  
36 Council President Leventhal,

37 Go ahead.

38  
39 Lisa Rother,

40 I was in the meeting when the County Executive told the people from Montgomery  
41 Village that he did not believe that the plan they were showing him, which was the 400  
42 buses on the Webb Tract was appropriate. But I guess I have concerns as the fact that  
43 the Executive branch along with the Council is going to be the ones that are going to  
44 have to do this entire process. And by limiting options at this point to saying zero, never,



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1 any busses on the Webb Tract I feel that it does set up a constraint that could be  
2 difficult in the future.

3  
4 Council President Leventhal,

5 Okay. Well my colleagues can decide how much they want this master plan because  
6 I've been very clear from the get go. There is too much involved here. The extent to  
7 which we're being candid with the community has bothered me from the start. This idea  
8 of the land swap sets up a situation where a land use that is highly objectionable to a  
9 residential neighborhood which directly abuts an industrial site we vote for a master plan  
10 which doesn't contain that site and then somewhere in some hermetically sealed  
11 chamber that we have no say over, despite major affect on the community, it's all out of  
12 our hands, we don't know. Is it the school system, is it Park and Planning, is it the  
13 Executive Branch, is it an RFP process? I don't know, our fingerprints aren't on it. Sorry,  
14 you can't stop it it's been in the works since it started. It's not the elected officials who  
15 have anything to say over it. We don't have any power over it. I don't accept that. I  
16 haven't accepted it from the very first day. When I've been asked about this I've tried to  
17 understand who are the decision-makers. There's a lot of potential decision-makers all  
18 stating views as to what is the most appropriate use, but ultimately -- I know I sound  
19 pedantic. I've read the Charter, the decision-makers are sitting on this side of the dais.

20  
21 Councilmember Denis,  
22 Don't tell the second floor that.

23  
24 Council President Leventhal,

25 We are the ones who are elected to make decisions about master plans and about land  
26 use. We are the ones who are accountable for our decisions. So I know there's been  
27 this concept which has been pitched by a lot of people which will end up being very  
28 profitable for some land owners and will create a great deal of needed housing. And I'm  
29 willing to vote for the Shady Grove master plan if I can provide comfort to my  
30 constituents that I am taking responsibility for this decision. That I'm not deferring it to  
31 somebody who isn't elected, who isn't accountable. That I am not washing my hands of  
32 the decision. That I am not saying "Jeez, it's out of my hands, there's nothing I can do  
33 about it." So I'm trying to be clear about who is in charge. And with respect to adoption  
34 of master plans, it is the County Council. Mr. Knapp?

35  
36 Councilmember Knapp,

37 Thank you, Mr. President, I have been sympathetic all along. This has been an issue I  
38 have wrestled with a lot because I think we have set up a situation -- I can point to a lot  
39 of people where I think the fault would lie but I'm not sure it's necessarily anyone that  
40 was trying to achieve something other than the fact happenstance of discussions. But  
41 clearly I think the perception within the community is that if you pass a plan that says  
42 obviously the goal is to move the County Service Park in order to get the maximum  
43 density -- and I think most of us are trying to achieve that so we can address our  
44 housing issue -- that there is this preconceived notion that the only place that that  
45 County Service Park will go is to the Webb Tract. Now lots of folks, Lisa, in particular,



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1 and Karen have said, "No, no, that's not the case." And we've all said it but there have  
2 not been a number of alternatives put out there and said here are the things that we're  
3 going to be looking for. To that end, I've had a series of conversations with Lisa and  
4 Karen and Marlene and others that looked at how do you describe in such a way so that  
5 it shows people that everyone was serious. There are a variety of options, and that the  
6 Webb Tract is by far only one of many. There is the Gude Landfill. There is Casey 6 and  
7 7. There are other Industrial sites. There are a variety of things that have not been  
8 brought up to the table. Gude Landfill, I know that Lisa has a memo that says there are  
9 other places in the country that have looked at landfills and done innovative things  
10 there. We have yet to do anything, from what I can understand, as to really assessing  
11 that as a viable site. Would make a lot of sense. Not near anything residential, near a  
12 reasonably solid transportation network. And so is there a way for us to put language in  
13 that gives people the assurance it is not a done deal for the Webb Tract, which I think  
14 that's what the Council President is trying to do. I don't know, but it kind of gets me to  
15 the question of what are the -- what's the -- if the Council were to adopt the motion that  
16 the Council President has just offered, what is the practical implication of that action in a  
17 master plan document?

18  
19 Marlene Michaelson,  
20 I don't think having that in the master plan would preclude the County Executive from  
21 proposal or the Council from considering during the CIP something to the contrary. I  
22 don't think the master plan binds where a public facility will be. It certainly is considered  
23 but I don't -- I'm not sure that would be the final word.

24  
25 Councilmember Knapp,  
26 Okay, because that's an important piece. I think if the Council is to take action today and  
27 says we voted to keep buses off the Webb Tract and the reality is we have no authority  
28 to keep buses off the Webb Tract by doing it in a master plan. I don't want anyone to  
29 think -- I don't want to create a misperception that another Council or County Executive  
30 could do something and people say, "Wait a minute, you did it. You passed the master  
31 plan" and then there was still this notion of a bait and switch that exists. I think that's  
32 problematic.

33  
34 Council President Leventhal,  
35 Let me understand with respect to how an RFP works. The Council gets another bite at  
36 this apple, the RFP is just a request. The final decision to go ahead with a land swap  
37 would still come before us.

38  
39 Marlene Michaelson,  
40 Yes, and my sense is that regardless of what you put in this master plan right now that  
41 any relocation is going to be a CIP project that will come before you. And at that point  
42 the Council can approve or disapprove whatever relocation options are presented in  
43 front of you and in fact the intent on Circle 45 of listing the types of analysis you wanted  
44 to see was to indicate that you would not approve the CIP project unless there would be



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1 a thorough vetting of all the alternatives. But that will be the true decision point on this  
2 one way or the other.

3  
4 Council President Leventhal,  
5 Mr. Subin?

6  
7 Councilmember Subin,  
8 Well, taken -- Ms. Michaelson is on the right track here, but there's another safeguard  
9 as far as this project goes and what the Council President is proposing and looking for  
10 those safeguards. It is correct, the master plan is not ultimately, at the end of the day,  
11 binding. It is guidance and it sets up a number of expectations. I think without needing  
12 to go to a record on this, because if the Council President's motion passes, you have  
13 something more than Council intent, legislative intent, the legislature has spoken and  
14 said we do not want the school bus lot on the Webb Tract. And if somebody comes in  
15 with a CIP request, i.e. dollars, I'll tell you right now what the answer's going to be. So  
16 putting the legalities aside, there's the practical impact of we do control the bottom line  
17 dollar even though the second floor doesn't like that and will make commitments without  
18 us. That is the reality. Even if the second floor recommends that expenditure, we'll say  
19 "Here's the record, here's the vote." And it's not simply legislative intent which has to be  
20 gleaned.

21  
22 Council President Leventhal,  
23 Ms. Floreen?

24  
25 Councilmember Floreen,  
26 Thank you. What concerns me is the terminology of the conversation. Because the  
27 community issue has been focused on the complete relocation of a large facility. What  
28 we've heard today is it's very unlikely that would be the direction that the school system  
29 would want to take. They would look at a more efficient smaller kind of facility. My  
30 question for Ms. Rother is what exactly did the County Executive say? He said he didn't  
31 support moving 400 school buses to the Webb Tract I gather? Something along those  
32 lines? He did not say, I am guessing, he did not oppose moving 125. Or did he? I don't  
33 know.

34  
35 Councilmember Silverman,  
36 I'm sorry. Lisa can talk about the meeting. She was in the meeting I was in a couple of  
37 Saturdays ago. He was crystal clear in saying he did not want to relocate the bus depot  
38 to the County -- from the County Service Park to the Webb Tract. He didn't qualify it with  
39 how many buses. He just was pretty clear. His view.

40  
41 Councilmember Floreen,  
42 Well the community conversation and our conversations have been based on scenario  
43 that involves full relocation. Nobody's -- this is the first time I've heard of anyone from  
44 the school system coming here and saying, "Well there are other solutions perhaps that  
45 we haven't had a chance to get our heads around although we're working with the staff."



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1 And I know that the -- we heard this from Karen in the PHED Committee I guess a year  
2 ago. And that was that. Then the community was continued to be very concerned about  
3 a full-fledged school bus facility there. No doubt they would consider to hear concerns  
4 about -- have some concerns about a different size. But I don't know what the school  
5 system would anticipate. There are lots of assumptions about how it operates with, you  
6 know, what the structures would be associated with it. That no one has had a  
7 conversation about. And I think it is certainly true that any location for school buses is a  
8 challenge. That's true. I believe we would second your assumption that it is not  
9 welcomed with open arms. So what do you do with the proposal to say the school  
10 busses should not be located in communities? I doubt that. We don't know where else  
11 they might be located but we sure want them to get to our kids on time. And improved  
12 systems might make it more efficient and more palatable to a community based on the  
13 assumptions and the planning elements involved.

14  
15 Council President Leventhal,

16 I have to say the idea that we don't know what we're doing when we pass a plan that  
17 proposes for the relocation of a major facility and we're just gonna throw it out there and  
18 see where it lands and we don't know where it's going to go doesn't speak very well to  
19 the actual knowledge that we have. We do know where it might go, we do know where  
20 the potential sites are. If we didn't why would we vote for this? Of course we know.  
21 There's 500 square miles in Montgomery County. We know what sites are available.

22  
23 Councilmember Floreen,

24 I don't myself know what the possible sites are. Maybe other...

25  
26 Council President Leventhal,

27 I appreciate the excellent Park and Planning staff who briefed me extensively on options  
28 on this.

29  
30 Councilmember Floreen,

31 Would this -- I had assumed that this -- these sorts of issues, not just for the School Bus  
32 Depot but for the relocation of all County services would be more -- the outreach and  
33 the decision-making process would be more clearly addressed in the implementation  
34 plan. Is that correct? Which would be presented to us for our approval.

35  
36 Karen Kumm Morris,

37 The implementation plan is a plan that does the process and identifies the agencies and  
38 the timing of what has to go where, when. Will we know -- will the RFP be out and will  
39 have gotten that far in the decision process with the Executive branch? I don't know.

40  
41 Councilmember Floreen,

42 Right. The decisions to be made wouldn't be on the table necessarily but the nature of  
43 the Council's involvement would certainly be the point for our decision-making or  
44 detailed assessment of exactly what the criteria would be for the public engagement.  
45 Well. Okay. Thank you.



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1  
2 Council President Leventhal,  
3 Mrs. Praisner?  
4

5 Councilmember Praisner,

6 Well, we are the ultimate decision-maker when it comes to the funding of any budget  
7 which would require appropriation for construction of any facility whether it is a school  
8 system facility or a County bus depot. So I thought as we went through this process we  
9 went through a master plan process that said we were not going to make the ultimate  
10 determinations as to where these facilities would be located. All of it -- the master plan  
11 in fact I found some language that says it's not predicated on -- and the master plan  
12 says it's not predicated on the relocation of all of these facilities. The implication, of  
13 course, is that if you move all of these facilities you obviously have more potential for  
14 housing. But whether it is the folks who don't want facilities moved or it's the folks who  
15 were advocating for significant housing, neither of those situations happens tomorrow  
16 as a result of adopting a master plan that is a 20-year document. Some of the facilities  
17 have more urgency than others associated with them. But all of this outlasts some of the  
18 individuals who are sitting here and sitting across the street by virtue of the timing of  
19 their political decisions. So with all due respect to the County Executive and to all of us  
20 the reality is this is a 20-year master plan. And before we can go and get full  
21 implementation of the master plan we have staging. We have the toughest staging  
22 requirements associated with any plan associated with this. So it ain't gonna happen  
23 overnight anyway. As a resident of a residential neighborhood that abuts an Industrial  
24 area that includes a School Bus Depot, although Mr. Silverman might like to move these  
25 buses to Calverton as he suggested to me a minute ago, he can't do that. Well if you  
26 had gotten the northern alignment of the ICC that might have been a viable option, Mr.  
27 Silverman. But the reality is there are bus depots all over the County and school bus  
28 locations are a challenge. And while the County -- whatever the County Executive may  
29 have said about the bus depot, "the," or a bus depot, "a," he's not the one who is going  
30 to be here over the long run. And even all of us are not gonna be here over the long run.  
31 Maybe Mr. Subin, but not the rest of us.  
32

33 Multiple Speakers,  
34 [ laughter ]  
35

36 Councilmember Praisner,  
37 ...over a 20 year master plan.  
38

39 Multiple Speakers,  
40 [ laughter ]  
41

42 [ INAUDIBLE ]  
43

44 Councilmember Praisner,





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1 My point is that we've said all along that the master plan is not where we're making the  
2 decisions about where these facilities will go. So I'm still not clear what motion we're  
3 taking and where it appears in the master plan that takes a parcel off the table at this  
4 point from any consideration of anything. It seems to me that while I am very  
5 sympathetic -- I met with Montgomery village folks as well --very sympathetic, I don't  
6 think Montgomery County public schools is talking about picking up and dropping down.  
7 Nor is anyone talking about picking up and dropping down EMOC even, because each  
8 of them is going to be resigned if located and where located. So again, with due respect  
9 to the County Executive, whose term ends on December whatever, and due respect to  
10 this Council, "whom's" term ends on December whatever, this is a 20-year master plan  
11 with staging such that it ain't gonna happen tomorrow. And I never thought I'd be sitting  
12 here advocating for the plan. But the reality is...

13  
14 Councilmember Silverman,  
15 Ah, but will you vote for it?

16  
17 Councilmember Praisner,  
18 Well, you'll find out, Mr. Silverman. But the reality is that taking something off the table  
19 when we don't know what it is that is going to be proposed if at all for that site. Yeah,  
20 there aren't that many but, yeah, there are other locations, seems to me to not be  
21 consistent with master plan actions. So I'm not gonna support the motion.

22  
23 Council President Leventhal,  
24 Mr. Perez?

25  
26 Councilmember Perez,  
27 Can you repeat the motion, Mr. President?

28  
29 Council President Leventhal,  
30 The motion would state and in response to Mrs. Praisner's question about where it  
31 might go, there is language I assume now in the master plan describing the area where  
32 the bus depot is located today that generally describes the potential for moving that to  
33 another location. So that's one possible place where this language might go. The other  
34 possible place is on Circle 44 which is in general descriptions at the end where we talk  
35 about the conditions by which the Council will consider a land swap. It seems to me an  
36 additional sentence there that simply says it is the Council's understanding that the  
37 Webb Tract is not a suitable location for the relocation of the School Bus Depot.

38  
39 Councilmember Perez,  
40 And again just trying to understand everything I've heard because I'm still reflecting on  
41 Mr. Knapp's point, which is the concern about setting unrealistic expectations. If you  
42 have a different Council with a different makeup in the year 2008 and this comes up and  
43 you have a different County Executive, which we will have, this has no precedential or  
44 binding effect if I understand everybody.



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1 Karen Kumm Morris,  
2 That's correct, it would be the CIP action would be the point at which a decision...

3  
4 Councilmember Perez,  
5 If I am Councilmember "X" duly elected in November of 2006, you know, that's great.  
6 They did that, they expressed their sense back then, but I have a different sense.

7  
8 Council President Leventhal,  
9 But that would be true for anything we do at any time ever. A future Council could  
10 always undo any decision this Council makes.

11  
12 Councilmember Perez,  
13 I'm just concerned about the general issue of -- I guess it would be fair to say that this is  
14 not any -- this is a sense a of the Council at this time. I guess.

15  
16 Council President Leventhal,  
17 I think it's more than that, Mr. Perez. I mean it is in writing. I think the constituents could  
18 take it to a future Council and say, "Look your predecessor Council voted for this." It is  
19 more than just a sense of the Council, it is language in a master plan. It is true that any  
20 future Council could decide "Well, actually we disagree and are gonna vote differently,"  
21 but it's pretty heavy burden on the future Council if the community believes it has been  
22 sent a clear signal and let me say this is a very unusual arrangement. When we say in  
23 this master plan we're not gonna speak to the specific location of things that are outside  
24 the plan. I've only vote on a few master plans but I am not aware of another one, if there  
25 is one someone would have to show me, where you actually take a major facility from  
26 one master plan, pull it out of that planning area and put it in another planning area. To  
27 say we are going to outline every block, every street, every intersection within this  
28 sector plan and we're gonna take things out of the sector plan and put them somewhere  
29 else but we don't know where that is because it's not in the sector plan is not really fully  
30 indicating to the community what we plan to do. So this is an unusual master plan and it  
31 has significant and specific implications for other planning areas because of this land  
32 swap concept which is central to the realization of the vision of this master plan. So it's  
33 unusual in that regard. I don't think it is honest frankly, I don't think it is consistent with  
34 our responsibility to the people that we represent to say, "Well this only addresses the  
35 confines of the Shady Grove sector plan area" because it doesn't. It proposes a plan  
36 swap which clearly has affects on other areas so I don't think it's -- I think it is relevant to  
37 this master plan to provide some guidance if the Council -- if a majority of the Council  
38 decides to provide that guidance as I've proposed and Mr. Silverman has seconded.

39  
40 Councilmember Perez,  
41 What were the other sites again? The other potential sites?

42  
43 Karen Kumm Morris,  
44 Well, the known sites, the Webb Tract, Casey 6 and 7. The other potential ones are the  
45 Gude Landfill site which will require a geotechnical study to determine the feasibility.



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1 There is the potential of adding more buses to the Bethesda lot with structured parking  
2 which is some benefit to the school operations there. There is the PSTA site which has -  
3 - could co-locate facilities that are already there on public property. We've also looked at  
4 just acreage and access and physical feasibility but we have not gone beyond  
5 contacting other property owners on other sites. But there's about four or five other sites  
6 also that are on our list and we intend to -- if we had a plan passed hopefully today we  
7 would move forward...

8  
9 [ laughter ]

10  
11 Karen Kumm Morris,  
12 We would move forward with the process that was outlined by Marlene with a very open  
13 process that Lisa Rother has identified and begin this process of working through that  
14 process and identifying possible sites for decentralizing not just school buses but you  
15 know all the facilities in the best locations that meets a public sector benefit here. We  
16 are trying to balance the public sector benefits with this plan as well as being mindful of  
17 community impact and we feel that the best way to be mindful of community impact is  
18 not to concentrate everything in one location. That is perhaps -- the Shady Grove Civic  
19 Alliance has been living with a large concentration of public facilities for a long time. And  
20 now we're recommending an incredible increase of housing and development around  
21 them. And the relocation of the County Service Park and all of this housing and new  
22 development would be from their point of view an unacceptable impact. So we're trying  
23 to balance all these different interests and find something that works best for the  
24 community, best for the public facilities and their operations, and we can do that best  
25 once we have a plan and we can start to work through an RFP process working with  
26 Executive.

27  
28 Council President Leventhal,  
29 The County Council is also trying to balance those impacts on behalf of the people we  
30 represent.

31  
32 Councilmember Perez,  
33 How many busses at the Bethesda depot currently.

34  
35 John Matthews,  
36 Currently we have about 185 busses at Bethesda but we should have more there.  
37 There was a map that's prepared I'm sure I can get for you that shows where the buses  
38 from the Shady Grove facility operate. They go to most regions of the County. The  
39 reason being there has ability been room at places like Bethesda to house the buss that  
40 could most logically operate from that facility. We're just land locked there and can't put  
41 any more buses there.

42  
43 Council President Leventhal,  
44 Okay I'm trying to figure out who spoke sometime ago. I think Mr. Silverman -- it has  
45 been the longest since we've heard from him.



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1  
2 [ laughter ]

3  
4 Councilmember Silverman,  
5 All right I have 20 minutes.

6  
7 [ laughter ]

8  
9 Councilmember Silverman,  
10 Set the timer. First of all, you know, I don't know, months ago when we had this  
11 discussion -- it was months ago, I believe I was trying to explain to the Council  
12 President how we don't do this kind of stuff in master plans. And I'm now of the belief  
13 that we should. Showing that I can grow, too. This is nothing more or less than a sense  
14 of the Council in terms of what this Council is intending to say. It doesn't have binding  
15 impact. It can't have binding impact. And as I think as many of us explained to some of  
16 our colleagues, the real decision will be made when this or the next County Executive  
17 makes a recommendation and this or the next Council actually votes on it. So this falls  
18 into the category of what the sense of the Council is. Now does it make any sense to do  
19 that at this point? Sure. Because what we've been doing is going along with a whole  
20 bunch of folks at the table who had a site primed and ready and in my opinion created  
21 absolutely no incentive for people to take a real hard look at other alternative locations.  
22 Whether they're privately owned. Whether they're publicly owned. This idea of double  
23 decking in Bethesda to create more opportunities there was never something that was  
24 discussed even in passing. But if you end up taking a bunch of busses and putting them  
25 in Bethesda as part of a expanded facility there, it reduces the number of buss that will  
26 have to go somewhere else and maybe that opens up smaller tracts of land rather than  
27 saying that there is -- whatever it is -- 130-acres on the Webb Tract. So, gosh, it would  
28 be real easy to plop it right in. Put the entire County Service Park there. All this does is  
29 express a sense of the Council -- this Council as to where we want to go. And at the  
30 end of the day I think that's appropriate given the context that's here. Also the first  
31 lesson I learned when I got here was to count. And I think we need to make sure that  
32 we get a master plan passed.

33  
34 Council President Leventhal,  
35 Okay. Ms. Floreen followed by Mr. Knapp.

36  
37 Councilmember Floreen,  
38 Thank you. Mr. Berlage, you sent us this plan -- thanks, I can see you there -- you sent  
39 us a plan that proposed relocation of major County facilities without a plan for where  
40 they were all gonna go. What's your recommendation on this issue? Doesn't just apply  
41 to the school buses. It applies to all these facilities.

42  
43 Derick Berlage,  
44 Well, the first thing I would like to say it's obvious that our staff's recommendations are  
45 running into some heavy sledding up here.



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1  
2 Councilmember Floreen,  
3 You're the boss of the Planning Board.  
4

5 Derick Berlage,  
6 Royce Hanson spoke very eloquently this morning about the importance of professional  
7 independent staff advice and that's what you just heard. Sometimes I don't like the  
8 advice they give us either, but they do give their best professional advice and that's  
9 what they're doing here. The Planning Board did not consider specifically this particular  
10 state of events because the Planning Board did not have before it a proposal that a  
11 particular use, meaning the school bus use, would be prevented from going to a  
12 particular location. But if we had had it before us I think we would have said that it is  
13 important for the public to keep its options open. That is not to say that anyone should in  
14 any way ignore the very legitimate and sincere issues raised by the communities  
15 adjacent to the Webb Tract. The question is will they have an opportunity to be heard on  
16 that question before the public acts. And they will have multiple opportunities. The RFP  
17 is a public process and decided by an elected official. The capital improvements  
18 program would have to be amended multiple ways before any of this could take place.  
19 All of that is a decision that will be made publicly by the community's elected officials. I  
20 don't believe that if the statement of intent is that the County should avoid putting all of  
21 the school buses on the Webb Tract, I don't think that that would do any damage to the  
22 long-term viability of the plan because I don't think even the school system needs to go  
23 there. But the notion of prohibiting any school bus use whatsoever does not seem to be  
24 a sound long-term decision. Because there could be a situation where not only there's a  
25 desire to move school buses there but that it can be done in a way that provides  
26 complete and perfect compatibility. Indeed, when this plan is finally implemented, it  
27 might be knowing what we know then that the community would rather have school  
28 buses than another public use that we're not even talking about today. We simply have  
29 no way of knowing. So I would argue for that flexibility knowing that's at least some  
30 quarters an unpopular recommendation.  
31

32 Councilmember Floreen,  
33 So then you're saying that the that you would recommend that we not adopt the  
34 proposal on the table to eliminate the consideration of the Webb Tract for housing  
35 school buses?  
36

37 Derick Berlage,  
38 I don't believe a categorical prohibition on any school busses going to the Webb Tract is  
39 the best approach.  
40

41 Councilmember Floreen,  
42 Okay. Thank you.  
43

44 Council President Leventhal,  
45 Mr. Knapp?



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Councilmember Knapp,

Once we actually dispose of the amendment on the table one of the things I would like to raise is -- cause I think it fits with this --- is a notion of clarifying the other sites or other alternatives that may be available for consideration. Whether the Webb Tract is or is not ultimately discussed depends on what we do, because I think that's been one of the issues that people have wrestled with which is, okay this site has been identified just because developer was motivated to make sure that people were aware of it. But I think to suggest that we relocate these pieces without giving people some idea of some of the places we're looking at I think again you still have this floating pile of things that we want to have end up somewhere and people ought to be aware of some of the places we're looking at. To propose putting out some of the other places just identifying them so people have some understanding as Karen has indicated so that Circle 45 we could put in the bullets there or something to the affect that a complete analysis of alternative locations for relocations including possible sites such as Gude Landfill, PSTA, Bethesda MCPS Depot, as well as privately owned Industrial sites just to give people some sense of other alternatives that exist to further clarify that for folks.

Council President Leventhal,  
Mr. Subin?

Councilmember Subin,

Mr. Berlage, Mr. Hanson spoke eloquently of your staff. You spoke very eloquently of your staff. And I will join both you and Mr. Hanson. However my question for you is a [pure] victory on this vote or the plan, which would you take?

Derick Berlage,  
The plan.

Councilmember Subin,  
Thank you.

[ laughter ]

Council President Leventhal,

I could say more but since no one else wants to say anything let's just vote. Those in favor of the amendment...

Councilmember Praisner,

Why don't we ask if folks are gonna vote for the plan?

Council President Leventhal,

No, let's -- what -- well, If we were gonna do that we could apply that to every single proposal. We've had many Councilmembers offer modifications to proposals before the Council and have their modifications pass and then vote against the policy or proposal



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1 that was before the Council even though their amendments passed. If we want to go  
2 down that road I could cite chapter and verse.

3  
4 Councilmember Silverman,  
5 Shocking! Shocking!

6  
7 Council President Leventhal,  
8 I could cite chapter and verse, you know....

9  
10 Councilmember Silverman,  
11 Wait, is this a straw vote or a real vote?

12  
13 Council President Leventhal,  
14 So...the amendment -- now, Mr. Knapp, I may not have completely got were you  
15 proposing an amendment in the second degree or a...

16  
17 Councilmember Knapp,  
18 You could put it as an amendment in the second degree or, if we want just dispose of...

19  
20 Council President Leventhal,  
21 Modification.

22  
23 Councilmember Knapp,  
24 It's a part of the broader discussion.

25  
26 Council President Leventhal,  
27 And what is the proposal, because we may be able to incorporate it. I'm just trying to  
28 understand what you're proposing.

29  
30 Councilmember Knapp,  
31 Sure. Add on Circle 45 those three bullets [ INAUDIBLE ] second bullet: Complete  
32 analysis of alternative locations for relocation including possible public sites such as:  
33 Gude Landfill, Public Service Training Academy, Bethesda MCPS Depot, as well as  
34 privately owned industrial sites.

35  
36 Council President Leventhal,  
37 Fine, we can incorporate that in one amendment if the secondary is comfortable.

38  
39 Councilmember Praisner,  
40 So I have a question. Does that include the Webb Tract which is a privately-owned  
41 parcel? Or does it take it off the table?

42  
43 Council President Leventhal,  
44 If I may answer the question. It would include the Webb Tract with respect to the County  
45 Service Park. Since nothing in my amendment precludes consideration of the Webb



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1 Tract for other amendments such as the liquor warehouse or the MCPS food facility or  
2 the Park and Planning maintenance facility. Those are not excluded by my amendment.  
3 My amendment simply states that it is the Council's understanding that the Webb Tract  
4 the an unsuitable site for the School Bus Depot. And I would be happy to include Mr.  
5 Knapp's suggestion in my amendment if that's acceptable to the secondary. So we  
6 could have one vote on all of that language. Now we've got more lights on. Mr.  
7 Andrews?

8  
9 Councilmember Andrews,

10 Thank you. I wanted to hear from the school system because I was interested to hear  
11 what their strategy is and what I hear their strategy is is they are interested in smaller  
12 sites, more decentralized siting. And I think in line with your comments, Mr. President,  
13 it's important to give communities -- any communities that may be end up with sites  
14 some assurance in terms of what they might expect. So I would propose adding  
15 language to what you have proposed that would say that it is the sense of the Council or  
16 the Council believes that in no case should any one site receive a majority of the buses  
17 that are currently housed at the Shady Grove depot. To indicate that we adopt that -- we  
18 believe in that strategy of not locating a disproportionate number of buses at one site.  
19 Phil, if I can get your vote for the amendment I'll go along with that understanding that  
20 based on the...

21  
22 Multiple Speakers,  
23 What about the plan?

24  
25 Council President Leventhal,  
26 Wait, wait, wait, wait. You think I'm too cheap? He's not gonna vote for the plan.

27  
28 [ laughter ]

29  
30 Councilmember Andrews,  
31 That's true.

32  
33 Councilmember Silverman,  
34 A rare moment of candor.

35  
36 Multiple Speakers,  
37 [ laughter ]  
38 I know, I know. An honest man!

39  
40 Council President Leventhal,  
41 Look, but what I understand to be the case is what has been -- and look I don't mean to  
42 I know I've been really rough on the Planning Board staff in the course of this master  
43 plan but they know I love them and they are superb. And it is my understanding that  
44 we're looking at a significant number of buses at the Bethesda site and looking at the  
45 Gude Landfill as another potential site for a significant number of the buses. So based





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1 on the briefing I received from the Planning Board staff, which is trying very hard to get  
2 me to vote for the plan, is consistent with Phil's language and I'm happy to accept Phil's  
3 language if the secondary is.

4  
5 Councilmember Knapp,  
6 I would not. I would not. I like the language that... All right.

7  
8 Councilmember Andrews,  
9 It was not in lieu, it was in addition.

10  
11 Council President Leventhal,  
12 All right.

13  
14 Councilmember Knapp,  
15 I wouldn't.

16  
17 Council President Leventhal,  
18 The seconder won't go along. I am willing to go along.

19  
20 Councilmember Perez,  
21 We have two different second degree amendments that we need to clarify the  
22 parliament posture is.

23  
24 Council President Leventhal,  
25 Okay, the parliamentary situation is that the maker of the motion and the seconder of  
26 the motion have agreed to modify the motion to incorporate the language suggested by  
27 Mr. Knapp. The maker of the motion was willing to modify the motion to incorporate the  
28 language suggested by Mr. Andrews, the seconder is unwilling. That's the parliamentary  
29 situation.

30  
31 Councilmember Perez,  
32 Is Mr. Knapp's -- yours is in addition to the language as opposed...

33  
34 Councilmember Andrews,  
35 Correct.

36  
37 Councilmember Perez,  
38 So what we effectively have is a motion that says nothing in the Webb Tract and take a  
39 look at these other places.

40  
41 Councilmember Andrews,  
42 Yeah.

43  
44 Council President Leventhal,  
45 That's the motion now before the Council. Okay...



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1  
2 Councilmember Perez,  
3 No school buses in the Webb Tract, take a look at these other things. I should have  
4 been more precise.

5  
6 Council President Leventhal,  
7 Correct. Okay, Mr. Perez, you still have the floor.

8  
9 Councilmember Perez,  
10 No I am just following the bouncing ball. And Mr. Andrews's motion was?

11  
12 Council President Leventhal,  
13 To say no one relocation site would have a majority of school buses. Which key would  
14 certainly make after the disposition of this motion. We can make it as a separate motion  
15 as well. And Ms. Praisner's light is on.

16  
17 Councilmember Praisner,  
18 So as I understand it, the folks at Montgomery Village can have the Montgomery County  
19 Department of Public Works and Transportation Bus Depot. They can have the liquor  
20 distribution process. They can have anything else that County government has no  
21 longer -- not at this point thought of or envisioned that might be decentralized. But they  
22 can't have any school buses that would serve their children and get them to their high  
23 school, middle school, and elementary schools in a quicker and more timely and  
24 potentially safer fashion? That's the motion that the Council is acting on? Thank you.

25  
26 Councilmember Silverman,  
27 Was that a question?

28  
29 [ laughter ]

30  
31 Councilmember Praisner,  
32 Well, that's my interpretation.

33  
34 Council President Leventhal,  
35 I think that's a severe mischaracterization. We have a site -- we're gonna vote on  
36 something that's been mischaracterized, but let's vote. I mean the buses are now at  
37 Shady Grove. The buses are not now next to Magruder High School. So there's  
38 privately owned land owned by a developer who stands to make a great deal of money  
39 by building housing near Metro. If we buy that land for that purpose, then some of those  
40 buses if we put them there, might end up serving the Magruder High School cluster.  
41 They are not located in the Magruder High School cluster. They are now located at  
42 Shady Grove. What we are saying is we will work to identify some sites which would  
43 decentralize the bus depot to some extent, but this particular location which is  
44 unacceptable to its immediate neighborhoods will not be considered for the bus depot.



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1 We're not changing anything that exists today. The buses today are at Shady Grove,  
2 they're not at the Webb Tract today.

3  
4 Councilmember Praisner,  
5 No, I understand that. I was just talking about the potential uses of the Webb Tract and  
6 what is not precluded from going on the Webb Tract and what could be placed on the  
7 Webb Tract.

8  
9 Council President Leventhal,  
10 We are not talking about a Department of Public Works and Transportation bus depot.,  
11 you mentioned that that's not under consideration.

12  
13 Councilmember Praisner,  
14 Well, it's not precluded from consideration by virtue of the motion in front of us.

15  
16 Council President Leventhal,  
17 Is there a bus depot -- is there a DPWT bus depot at Shady Grove now?

18  
19 Councilmember Praisner,  
20 Yes. Yes. Yes.

21  
22 Council President Leventhal,  
23 No, no. No, It's not a bus depot.

24  
25 Councilmember Praisner,  
26 It's bus building.

27  
28 Council President Leventhal,  
29 No it's not it's maintenance facility, it's not a bus depot.

30  
31 Councilmember Silverman,  
32 It's bus depot. It's buses, it's 400 buses.

33  
34 Council President Leventhal,  
35 Okay. The motion is before the Council we have it for...

36  
37 [ laughter ]

38  
39 John Matthews,  
40 That's not going anywhere.

41  
42 Councilmember Praisner,  
43 What's not going anywhere.

44  
45 Council President Leventhal,



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1 I'll explain it to you later.

2  
3 Councilmember Praisner,

4 No I understand your saying it's not going anywhere but the potential is still out there by  
5 virtue of the motion.

6  
7 Council President Leventhal,

8 Okay. There are strong views on this motion. Those in favor will signify by raising their  
9 hands. Okay, that would be Mr. Denis, Ms. Floreen, Mr. Subin, Mr. Silverman, Mr.  
10 Leventhal, Mr. Perez, Mr. Andrews, and Mr. Knapp. Those oppose will signify by raising  
11 their hands. That would be Ms. Praisner. Okay on the matter of the County Service Park  
12 is there additional, is there another motion. Mr. Andrews did you have a motion.

13  
14 Councilmember Andrews,

15 Yes, thank you. I'll move what I had moved as an amendment which is in the event of  
16 relocation of buses at the Shady Grove depot that no relocation site will receive a  
17 majority of the relocated buses.

18  
19 Council President Leventhal,

20 I'll second that. Is there discussion? Mr. Perez. Can we hear from the school?

21  
22 John Matthews,

23 Just a point of clarification. If you cut them in half is majority the right word?

24  
25 Councilmember Perez,

26 Well, that was the question I had.

27  
28 Councilmember Andrews,

29 I did think of that. I thought that you probably have the ability if that was the case that  
30 you could -- I anticipate you could have 49% move to 2 and 2 percent moved to one of  
31 your other locations given the system that we have. I didn't think that would be a  
32 problem.

33  
34 John Matthews,

35 Well, it only poses a problem if -- you know not knowing what the options are. That  
36 would preclude us from ever having over 200 buses at any facility using today's  
37 numbers. I'm not sure that that would really serve our needs. If we were to move 50  
38 buses to Bethesda and expand that location, that leaves us with 350 buses to put some  
39 place. Assuming that would get two other facilities somewhere it might work. But I'm not  
40 sure I can make that assumption. So I'm not sure I know how to answer the question.

41  
42 Council President Leventhal,

43 Would we say some language like this, Mr. Andrews, could we say something like "It is  
44 the Council's understanding that the school system seeks a dispersal of buses such that  
45 the entire bus depot shall not be moved to a single location?"



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1 Councilmember Andrews,  
2 All right.

3  
4 Councilmember Perez,  
5 Or a disproportionate share.

6  
7 Council President Leventhal,  
8 Or a disproportionate share of buses should not be located at a single location.

9  
10 Councilmember Andrews,  
11 Fine. All right.

12  
13 Council President Leventhal,  
14 Does that accomplish.

15  
16 Councilmember Andrews,  
17 That's the intent.

18  
19 Unidentified Speaker,  
20 Which one, the first language?

21  
22 Councilmember Andrews,  
23 No the intent that no community is to receive a disproportion percent -- burden. I think  
24 that -- I mean I think I understand what you are trying to do. Which is to phrase it in a  
25 way we don't get caught by an artificial number. If the school system has particular  
26 language it would like to suggest that's fine.

27  
28 John Matthews,  
29 My only concern is that the goal is to not move to a mega-facility.

30  
31 Councilmember Andrews,  
32 Right.

33  
34 John Matthews,  
35 The goal is to decentralize and have smaller facilities in the communities where the  
36 buses serve the children. And so I am not sure what language...

37  
38 Council President Leventhal,  
39 Well, you've said it very well. It is the Council's understanding the school system seeks  
40 to decentralize the bus facilities so they are relocated to more than one site and that no  
41 single site would carry a disproportional number of the buses to be relocated. You said  
42 it well.

43  
44 Councilmember Andrews,  
45 Okay? Did we get that?



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1 Council President Leventhal,  
2 Okay. So the motion has been made. I've seconded it. Any further discussion on that?  
3 Mr. Subin?  
4

5 Councilmember Subin,  
6 Well, the problem with that is what is a disproportionate number is it 60/40, 75/25, is it  
7 55-45. I can tell you right now whoever gets a 55 is gonna say we're getting a  
8 disproportionate number. So if you all want to deal with that that's gonna be fun to deal  
9 with. Now they're gonna have to make their judgments on how many go where and how  
10 many different places they're going to need based on the exigencies of that moment. Of  
11 where the kids are. So to predetermine ahead of time that disproportionate number,  
12 even if you could come to terms with what a disproportionate number is, is to say to  
13 them you may not be able to do what is the most efficient thing to do. So you are now  
14 constraining efficiency. And I can write out the debate and the criticisms against the  
15 school system right now if this passes and they follow the dictates and it is not the most  
16 efficient way to do it. "You people, all you want to do is buy land and spend our money."  
17 That is gonna be the essence of the debate. Because you'll never be able to get to what  
18 is disproportionate.  
19

20  
21 Council President Leventhal,  
22 Okay, how about if we say that the bulk of the buses would not...

23  
24 [ laughter ]  
25

26 Councilmember Andrews,  
27 Well, I think the goal here is to show support of the Council for the school system's  
28 dispersal strategy. Decentralize -- to support the school system's intent to decentralize  
29 the location of school buses to maximize...

30  
31 Council President Leventhal,  
32 If we anticipate the bus depot -- Well, fine. Period. Fine. Great. Okay, Marlene, what do  
33 you understand we're voting on.  
34

35 Marlene Michaelson,  
36 It is the Council's understanding that it is the school system's intent to decentralize the  
37 school system bus depot.  
38

39 Council President Leventhal,  
40 Fine. Okay?  
41

42 Councilmember Andrews,  
43 Okay. All right, those in favor -- did anyone else want to debate that? Mr. Subin?  
44

45 Councilmember Subin,



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1 Are we determining land use policy or educational policy?

2  
3 Councilmember Praisner,  
4 We just did.

5  
6 Councilmember Subin,  
7 Well, the land use was you can't go here. This other is here's how you're going to do it.  
8 And if you understand it, why are you putting an understanding in a master plan? For a  
9 school system issue?

10  
11 Council President Leventhal,  
12 Okay. Okay. Those in favor of the motion will signify by raising their hands. That would  
13 be Mr. Andrews, Mr. Perez, and myself. Those opposed will signify by raising their  
14 hands. That would be Mr. Denis, Ms. Floreen, Mr. Subin, Mr. Silverman, Ms. Praisner,  
15 and Mr. Knapp. Okay, the motion fails 3-6. What's next? What's the next issue,  
16 Marlene?

17  
18 Marlene Michaelson,  
19 I believe that it is on the County Service Park relocation issues so we'll move on to  
20 densities then. I wanted to clarify two things for you. One was that the original draft  
21 resolution some of the densities were incorrectly calculated. They're revised here. More  
22 importantly what we've done is created both base densities that are densities without  
23 any of the bonuses that would be available using the MPDU bonuses, if workforce  
24 housing legislation passes and were specifically applied here, TDR densities, and so  
25 now we have a base density and a bonus density that makes it very clear what the  
26 number of units would be with and without the bonuses.

27  
28 Council President Leventhal,  
29 Okay. Ms. Floreen has her light on.

30  
31 Councilmember Floreen,  
32 Marlene, I just wanted to be clear about the TDR element of all of this. Do the numbers  
33 reflect what the Council did which was to require TDRs?

34  
35 Marlene Michaelson,  
36 Yes. The bonus densities do include the TDRs recommended by the Council. We will be  
37 coming back to you with a TOMX/TDR zone that would implement that but that's what  
38 the numbers reflect right now.

39  
40 Councilmember Floreen,  
41 I know that -- well we did have a draft of that before us. We don't have it before us  
42 today. I just wanted -- I think it's very important that we utilize this site as receiving areas  
43 for TDRs. And I want to make sure that the numbers -- and I hope it will be the Council's  
44 intention in the TOMX Zone language on TDRs to be very clear that we're going to  
45 require TDRs. Not that it's going to be an interesting option for somebody, but that in



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1 fact that will be an expectation of projects coming through. So that we will actually get  
2 the TDRs employed. Is that -- do these numbers contemplate that.

3  
4 Marlene Michaelson,  
5 I don't think the numbers do one way or the other but that is policy that certainly the  
6 Council can set as you consider that legislation. I mean right now the numbers here  
7 under the bonus density do assume full use of TDRs. And so if within the text  
8 amendment you want to make that more than an option, we'll try to figure out how to do  
9 that through the text amendment language.

10  
11 Councilmember Floreen,  
12 Okay. Fine. Thank you.

13  
14 Council President Leventhal,  
15 Okay.

16  
17 Marlene Michaelson,  
18 The next issue deals with Washington Grove and their request that we highlight the  
19 historic nature. And you see some language here that was submitted by the community  
20 to do that.

21  
22 Councilmember Praisner,  
23 Do we need a motion. No, right now this is in the -- you know it is in the draft before you.  
24 It is in there, yes.

25  
26 Marlene Michaelson,  
27 On the issue of detailed design guidelines...

28  
29 Council President Leventhal,  
30 I'm sorry, there's a question on Washington Grove. Mr. Andrews.

31  
32 Councilmember Andrews,  
33 Not a question actually just a note of appreciation for the work by the staff on this and  
34 by [Shelly Winkler] of the Washington Grove who worked hard on this issue as she did  
35 on many other aspects of the plan. Appreciate the Council recognizing the historic town  
36 of Washington Grove in the master plan.

37  
38 Council President Leventhal,  
39 Okay. Thank you Mr. Andrews.

40  
41 Marlene Michaelson,  
42 On the next issue of design guidelines. Councilmember Floreen noted in some cases  
43 the plan was a bit too detailed. So what we did was on those particular issues we took  
44 out the detailed references to things such as specific locations for landscaping. But still  
45 continued to highlight the importance of those issues. The next issue has to do with the





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1 recreation center. And this is an issue that the community was very concerned about.  
2 The Committee debated this at numerous meetings at length and the Council did as  
3 well. Basically what happened was the Recreation Department said that Shady Grove  
4 did not meet their existing standards for a new recreation center. The community  
5 continued to feel that was very important, both for the services and to make sure it  
6 would provide a focal point for the community. Therefore I attempted to think about how  
7 we might deal with the community's concerns without changing the Council's intent or  
8 without saying we were gonna be using a different standard for recreation services in  
9 Shady Grove than elsewhere in the County. So the resolution reflects two changes.  
10 First it highlights that the park and the library which is recommended already for this  
11 area should be a community gathering point and focal point. And so that would help in  
12 during the design to try to create something that the community would support. The  
13 Council already included language related to the library that's saying at the time before  
14 the library is constructed to assess the need for additional meeting space. Once again  
15 that could make it a gathering place. And I've also -- because several people have  
16 raised the concern that the concentration in density in Shady Grove means that Shady  
17 Grove should be looked at differently than the rest of the County I've also raised the  
18 question of whether or not the Rec Department should be looking at their standards to  
19 determine whether the concentration of density merits any other -- an alternative  
20 approach. But if they do this, I would strongly recommend that it be done on a  
21 Countywide basis so you are looking at dense centers wherever they may be rather  
22 than implying Shady Grove is in some way going to be treated separately. If the Council  
23 supports this second bullet and asks for a study of recreation standards, I suggest that  
24 be done before development occurs here so that the analysis would be available. That's  
25 not in the resolution yet. So I just add something to refer to doing this analysis before a  
26 preliminary plan for development is approved.

27  
28 Council President Leventhal,  
29 Mr. Silverman. Okay, Marlene, first of all you need a motion on that language because  
30 you don't have it in here.

31  
32 Marlene Michaelson,  
33 No it is in the resolution right now. It is in there now. So I wanted to highlight it for you.

34  
35 Councilmember Silverman,  
36 We're okay we don't have to do anything.

37  
38 Marlene Michaelson,  
39 The only change would be to add the date reference to do it in a timely manner.

40  
41 Councilmember Silverman,  
42 Okay. Well, I was gonna suggest we do that but I have another piece of this as well.

43  
44 Council President Leventhal,  
45 You have the floor.



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1 Councilmember Silverman,  
2 Okay do you want to see whether there's objection to adding the date reference.

3  
4  
5 Council President Leventhal,  
6 Is there objection? There is no objection.

7  
8 Councilmember Silverman,  
9 Okay, one of the things -- thank you, Mr. President -- one of the things that had been  
10 raised had to do with I think with potential community gatherings and also recreational  
11 activities in the area. Not the full-blown gymnasium concept, but the idea that in the  
12 absence of there being a full-blown community recreation center, particularly as it  
13 relates to kids, what about something like smaller scale recreational activities like game  
14 rooms or ping pong, pool, that type of thing. So if this isn't completely outside the box I  
15 am gonna suggest the following on circle 32, lines 1298-1300. And this may be unique  
16 in terms of a library, b But since we're really talking about a library that is also a  
17 community meeting space piece, some of it, I am gonna suggest the following  
18 language. Where it on 1298 so it's taking what's on 1298 through 1300 out, or actually  
19 modifying it to say "incorporate additional meeting space including some kitchen  
20 facilities and smaller scale recreational activities such as a game room to meet  
21 community needs for a gathering place."

22 Councilmember Floreen,  
23 I'll second.

24  
25 Council President Leventhal,  
26 Okay. Is there a discussion on this motion? There are a lot of lights on, is there further  
27 discussion on this motion?

28  
29 Councilmember Praisner,  
30 Yes.

31  
32 Council President Leventhal,  
33 Yes? Okay, Ms. Praisner.

34  
35 Councilmember Praisner,  
36 I think the issue when we get to the -- I seconded the motion because I do think that  
37 part of the problem is terminology. And as the plan talked about community center,  
38 recreation center issues, we have, I think the community asking for a focal point and a  
39 place where they can meet, where they have can have activity together as opposed to  
40 the Recreation Department looking at the criteria for the gymnasium, exercise room, all  
41 of the other activities. You also have the potential with the private redevelopment that  
42 some of the population for some of those activities will go to their own facilities within  
43 the buildings. The problem with that for children is that that's fine if you live in that  
44 building. But as we have learned with apartment complexes where facilities are  
45 provided, you don't -- there tend to be restrictions as to how broadly that space can be



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1 used. So tying it into the library or tying it into public space without the full-blown  
2 recreation center does provide an opportunity for folks from multiple housing complexes  
3 to come together without the restrictions that sometimes get associated with that  
4 activity. It also allows you as you get to the point of designing the library to do an  
5 assessment. And this is where I had the question. I think that's what we said in the plan  
6 but I wanted to make sure. An assessment of what exists and what is proposed to be  
7 developed, such that you can compensate by having not only the kitchen facility but  
8 also the game room kind of concepts. So that's exactly where I was going. So I'm glad  
9 to hear that motion on the table.

10  
11 Council President Leventhal,  
12 Mr. Andrews?

13  
14 Councilmember Andrews,  
15 Well, I think that it's step forward. It's less than I think is ideal -- many things of course  
16 are less than ideal. But it's step forward from the original proposal that emerged earlier.  
17 So I think it's worth supporting. I appreciate the suggestion.

18  
19 Council President Leventhal,  
20 Mr. Knapp?

21  
22 Councilmember Knapp,  
23 I too want to build on Ms. Praisner's comments because one of the -- I'm very  
24 sympathetic to what the community said because one of the issues we've seen  
25 especially in the upcounty as you have so many HOAs or separate building and units  
26 you end up with a sense of community in that area through their pool or through their  
27 local community center -- usually a small room -- but what it doesn't allow is for the  
28 interaction of the broader community. And so you lose that ability to develop an identity  
29 and for the community to come together. So I think this is certainly a start. I think it's  
30 important for the Rec Department as they look at this to recognize that notion that  
31 maybe the standards need to be modified, that as we grow as a County, that there need  
32 to be especially in communities of this size the ability to bring those people together. It's  
33 not just necessarily about the recreational facility but this is how we develop community  
34 in our larger community. So I am please we brought this amendment forward and I think  
35 the language that Marlene has put in here is a way to try to get at that.

36  
37 Council President Leventhal,  
38 Ms. Floreen?

39  
40 Councilmember Floreen,  
41 I just wanted to understand, Marlene, under the -- on page 88 of the plan, does it say  
42 "consider" or does it say "will do this"?

43  
44 Marlene Michaelson,  
45 If you are talking about the bullet of the library.



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1  
2 Councilmember Floreen,  
3 Yes. All these things.

4  
5 Marlene Michaelson,  
6 The end says "if needed to help meet community needs or create a community focal  
7 point." So my sense is you are going to be assessing the need at that time. This is not a  
8 definitive action.

9  
10 Councilmember Floreen,  
11 I think what Mr. Silverman proposed was to eliminate that and to add a clear directive  
12 on the point. Maybe we should clarify that whether -- Mr. Silverman was it your intent to  
13 eliminate the part of the sentence that said "if needed to help meet community needs or  
14 create a community focal point"?

15  
16 Councilmember Silverman,  
17 I did take out the "if needed." I mean if people will not support the "if needed" if they'll  
18 just support -- I mean in other words...

19  
20 Councilmember Floreen,  
21 Well, my concern here was simply about making promises and commitments with  
22 respect to a building design that may be satisfied by other elements...

23  
24 Councilmember Silverman,  
25 All right, okay, then just put "if needed to meet community needs." We'll keep the if  
26 needed. I understand. I understand.

27  
28 Councilmember Floreen,  
29 Okay. That's fine. Well done, Mr. Silverman.

30  
31 Council President Leventhal,  
32 No further lights on this then. Those in favor of the amendment will signify by raising  
33 their hands. Any opposed signify by raising their hands. It passes unanimously among  
34 those present. Before we get to the Gude Drive I have two other issues that are not  
35 itemized in Marlene's memo and I know other Councilmembers may as well. First of all,  
36 I'd like to propose the of a Shady Grove Citizens Advisory Board.

37  
38 Councilmember Praisner,  
39 I already have the language and the motion.

40  
41 Council President Leventhal,  
42 Well, let's go. Here it is.

43  
44 Councilmember Praisner,  
45 Let me pass it around.



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1  
2 Multiple Speakers,  
3 I want to do it. I want to do it. We all want to do it.

4  
5 Councilmember Praisner,  
6 It goes after line 1854 on circle 44, "The Council recommends the creation of a Shady  
7 Grove Advisory Committee" -- you can put Shady Grove master plan Advisory  
8 Committee -- to support the redevelopment of the Shady Grove sector plan area. This  
9 Committee should be established by M-NCPPC and develop a work program to further  
10 these goals. Responsibilities of the Advisory Committee should include monitoring  
11 implementation of plan recommendations, assuring that the recommendations  
12 contained in the implementation plan are followed, and ensuring that problems with  
13 implementation are promptly brought to the attention of the Planning Board and/or  
14 Council."

15 Council President Leventhal,  
16 Second.

17  
18 Councilmember Praisner,  
19 That is in essence taking language I asked Marlene to draft from the Olney master plan.

20  
21 Council President Leventhal,  
22 Okay, Ms. Floreen.

23  
24 Councilmember Floreen,  
25 I support the initiative. I am not sure that you mean to say to support the redevelopment  
26 of the Shady Grove plan, but to oversee and to be engaged as a sounding board. Is that  
27 the thought, Ms. Praisner?

28  
29 Councilmember Praisner,  
30 Well, I asked Marlene to pull the language we used in Olney and to the extent it was not  
31 adequate this is what we did in Olney.

32  
33 Councilmember Floreen,  
34 Okay, so this is more or less the same.

35  
36 Councilmember Praisner,  
37 Yes. Boilerplate.

38  
39 Councilmember Floreen,  
40 And this would be as part of the implementation measure? 1854 is another place. Okay,  
41 I would just say that it seems to me that we could want to make sure that such a group  
42 was engaged in the -- perhaps in the development of the implementation plan as well,  
43 although I think the timing is tight.

44  
45 Marlene Michaelson,



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1 Right. You've asked for the implementation plan before the rezoning which you are  
2 gonna have to do this summer, so...

3  
4 Councilmember Praisner,  
5 It will be up and running.

6  
7 Councilmember Floreen,  
8 So I think we would want to be clear that we expect this group to be created by the time  
9 of the sectional map amendment. Okay. Thanks.

10  
11 Council President Leventhal,  
12 Mr. Knapp.

13  
14 Councilmember Knapp,  
15 Just two points to raise relative to our conversation we've had this morning, and that is I  
16 think it's great idea and was pleased doing the Olney master plan, I think it was a good  
17 idea to do here. The one thing I think we need to be mindful of is what's this mean for  
18 resources of Park and Planning who are already as we understand stretched thin and  
19 we're told we can't keep layering things on top. So I think we need to be mindful of that.  
20 The second is, as was recommended, I don't know how this is played out in the past but  
21 to think about having at least Planning Board members participate in some way, shape,  
22 or form on these type of things as well to get that kind of feel and community notion that  
23 we discussed in the morning session so I just wanted to raise those two points as  
24 something to take into consideration as we consider this.

25  
26 Council President Leventhal,  
27 Okay, but those don't require a change to this amendment?

28  
29 Councilmember Knapp,  
30 No they don't, just points to raise relative to what we were talking about earlier.

31  
32 Council President Leventhal,  
33 Suggestions well taken. Mr. Andrews.

34  
35 Councilmember Andrews,  
36 I think this is an excellent proposal. The Shady Grove community has been extremely  
37 involved in the plan since the charrettes back in fall of 2000. There have been a number  
38 of people involved intensively all of those years and I know there are a number mo  
39 would want to be involved in it. So this is an important component. And I just want to  
40 also add that one other person from Park and Planning -- more than one, but one in  
41 particular -- Karen Kumm, who has been the lead planner working with the Shady Grove  
42 sector plan is I hope someone who will continue to be involved very much in the plan,  
43 because she knows the plan. I'm sure she dreams about the plan.

44  
45 [ laughter ]



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Councilmember Andrews,

She's desperate to have this plan voted on. And she's the natural person in my view to continue to be the lead person on this. It would be a shame if all her knowledge wasn't used in that way, so thank you, Karen.

Council President Leventhal,

Okay, those in favor of the amendment signify by raising their hands. Any opposed will raise their hands. There are none. It is unanimous. Okay. I wanted to -- well I wanted to ask about the school site. Do you have a proposal on that as well, Ms. Praisner.

Councilmember Praisner,

No I have an issue as far as language about the high school that I wanted to suggest that's all. And I'm sorry that the school system folks left, but...

Councilmember Silverman,

Where are you?

Councilmember Praisner,

I'm on circle 31 line 1265, 1264-5 where we're saying "recommending a new high school" -- we took out the word "cluster," right? Okay, as long as we took out the word "cluster" that's all right. I'm fine.

Council President Leventhal,

My question has to do with the elementary school Casey at Mill Creek. We understand there are many aspects of this plan that we hope that the private sector will bring about and that this is property that perhaps can be acquired at no cost to the County. I know that the community really wants to pin this down and make sure that this is the site and that Blueberry Hill Park is absolutely not under any slightest possibility going to be the site. And so is there -- what have we done to provide assurance to the community that this site is gonna be acquired -- the Casey at Mill Creek is going to be acquired for the school?

Marlene Michaelson,

First of all we took out all references to Blueberry Hill as an alternative and I think the Council record on that is very clear. Then the plan language says that the school site should be at Jeremiah Park which is the existing site of the County Service Park unless privately acquired. But it also indicates that if the County Service Park does not relocate, that it is clear that we would have to purchase that property. So we have set up an alternative where we are hoping to get private purchase of this but recognize that that does not happen that we will have to purchase the site .

Councilmember Praisner,

See, it's removed on Circle 31.



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1 Council President Leventhal,  
2 Right.

3  
4 Councilmember Praisner,  
5 The school site, Blueberry Hill school site.

6  
7 Council President Leventhal,  
8 Okay. Well, all right, I don't have any amendment ready on that. I think we need to  
9 reassure the community that those are our plans.

10  
11 Councilmember Praisner,  
12 It's been eliminated from the plan.

13  
14 Councilmember Silverman,  
15 Yeah, there is -- we've received a lot of correspondence including recently by the Brad  
16 Botwin, who's the acting President of the Greater Shady Grove Civic Alliance. And in  
17 the section on purchase Casey Mill Creek property it says the Council should provide  
18 the necessary funding to purchase the school property as called for in the plan. The  
19 funds should be made available now rather than wait and possibly jeopardize the plan  
20 by losing access to the land. That's not going to happen. If we can't -- if it isn't going to  
21 be privately donated in affect, then we're buying it. And whatever the time line is and  
22 that should be clear to the community that we're not gonna lose this site. A site.

23  
24 Council President Leventhal,  
25 Ms. Floreen?

26  
27 Councilmember Floreen,  
28 I don't think that's exactly correct. I think the issue -- the point is that it may be acquired.  
29 But ultimately it would otherwise the school would ultimately be located in the Jeremiah  
30 Park site. Not the Casey property. And I don't think we disagree. But I think you just  
31 don't want to suggest things that are definite.

32  
33 Karen Kumm Morris,  
34 I think Mr. Botwin is raising this because they're aware of a time constraint on the  
35 preliminary plan. And it means that this spring -- in the budget this spring we need to  
36 know whether it will be acquiring it or it being dedicated to us.

37  
38 Councilmember Floreen,  
39 Yep.

40  
41 Council President Leventhal,  
42 And is there a mechanism in place to have the answer on that?

43  
44 Karen Kumm Morris,





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1 Well, we're all monitoring it. And if we don't -- if someone doesn't acquire it privately and  
2 dedicate it to us by the time we're taking the budget up I foresee we'll have to have a  
3 budget item for it. And the County still may be reimbursed in the future if the County  
4 Service Park relocation moves forward and will still be able to have it privately provided  
5 to us in basically refunded funds. But we will have to make a decision this spring.

6  
7 Marlene Michaelson,

8 Well, actually not that's the exactly the reason why we have the [ALAR] for Park and  
9 Planning and school system is so that when a site becomes available and we need to  
10 take rapid action we're able to do that so it doesn't necessarily have to be tied into the  
11 budget review.

12  
13 Council President Leventhal,

14 Okay. I have no further issues before we get to the Gude Drive/Route 355 interchange  
15 issue. Is there anything else before we get into that? Well, the memo outlines some  
16 issues the Council did take a straw vote on this matter. So I think it would require  
17 amendment to the contrary. We know that staff has views on this. But I am gonna wait  
18 and see if any Councilmember seeks to change the prior decision of the Council on this.  
19 Ms. Floreen.

20  
21 Councilmember Floreen,

22 Well, I think we should have this conversation. Since the decision was reached we've  
23 heard from WMATA on the subject. We have a letter in the packet and some very  
24 strong recommendations from the staff on the subject and I think it would be worthwhile  
25 for us to hear from Mr. Counihan.

26  
27 Council President Leventhal,

28 Let me structure this this way. If a Councilmember wants to offer a proposal then I think  
29 we could entertain community or staff comments related to that Councilmember's  
30 proposal. If a Councilmember is not offering a proposal it would seem to me the prior  
31 decision of the Council would stand. So if Councilmember Floreen or any other  
32 Councilmember wants to offer something to come before the Council, would be then  
33 germane to discuss it.

34  
35 Councilmember Floreen,

36 Well, I will -- let's see, Mr. Orlin has a proposal to move this to Stage 3 based on the  
37 analysis that, number one, we already are imposing some of the highest expectations  
38 for intersection operation I think then we've ever had in place before. And, number two,  
39 it would otherwise jump over a number of other key County projects in terms of County  
40 priority. So I would move that we follow Mr. Orlin's recommendation and move this  
41 intersection improvement to Stage 3 rather than Stage 2.

42  
43 Council President Leventhal,

44 Is there a second?  
45



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1 Unidentified Speaker,  
2 I'll second for purposes of discussion...

3  
4 Council President Leventhal,  
5 The motions made and seconded for the purposes of discussion. Ms. Floreen, are you...  
6  
7 Councilmember Floreen,  
8 Well, I'd like to hear from Mr. Counihan.

9  
10 Council President Leventhal,  
11 Well, there's other Councilmembers who would like to speak first.

12  
13 Councilmember Floreen,  
14 Okay, well, you asked me.

15  
16 Council President Leventhal,  
17 No, no, but I'm asking if you're done making your comments. We'll hear from WMATA,  
18 we'll -- Gene, you'll get your chance. I just want to make sure every Councilmember has  
19 made his views known, or her views. Okay, Nancy, if you don't want to talk any more  
20 you need to turn your light off. Okay, Mr. Subin?

21  
22 Councilmember Subin,  
23 Mr. President, I am gonna vote against this. I've seen the arguments that WMATA has  
24 posed here. I've also seen the issues regarding intersections and where this intersection  
25 is relative to other priorities. And it seems to me that it's nowhere, basically, despite the  
26 fact -- and I would agree this is an intersection that cries out and has been crying out for  
27 fairly rapid relief. That said, it's not going to happen. And if this intersection is used as a  
28 trigger for either Stage 2 or Stage then in fact Stage 2 and Stage 3 are not going to  
29 happen. Certainly I would think to let Stages 1 and 2 go is better than on 3. But I believe  
30 that this language ought to be deleted all together. The arguments that...

31  
32 Councilmember Floreen,  
33 I'll second your motion.

34  
35 Councilmember Subin,  
36 Well, you have to withdraw your motion.

37  
38 Council President Leventhal,  
39 We're going to get to Mr. Subin's -- right, you have to withdraw your motion.

40  
41 Councilmember Subin,  
42 So I would request that the makers of the motion withdraw the motion, and I will  
43 substitute instead a motion to delete the language.

44  
45 Council President Leventhal,



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1 Well, in fact you could offer your amendment as a substitute.

2  
3 Councilmember Subin,  
4 It's easier this way.

5  
6 Councilmember Floreen,  
7 That's fine.

8  
9 Councilmember Silverman,  
10 If it fails then you go back to...

11  
12 Council President Leventhal,  
13 So the substitute now before us which has been made by Mr. Subin, seconded by  
14 Ms.[sic] Floreen, is simply to delete the amendment earlier offered by Mr. Andrews,  
15 which imposes the new staging requirement relating to the 355/Gude Drive interchange.  
16 Okay.

17  
18 Councilmember Subin,  
19 Then just as a final, since it's out there, I think WMATA also makes compelling  
20 arguments about not prejudicing its development since it is the most transit friendly  
21 potential developments out there and could possibly have Metro workers living there.  
22 And I think, in fact, that has been one of our objectives is to get working folks to be able  
23 to live in the County and provide the kind of housing they could move into and have  
24 transportation.

25  
26 Council President Leventhal,  
27 Mr. Andrews?

28  
29 Councilmember Andrews,  
30 Thank you Mr. President. Well, I am not sure what's changed in the last month. It was  
31 just a month ago that the Council unanimously supported this important trigger in the  
32 Shady Grove sector plan to ensure that before Stage 2 goes, forward which would  
33 begin at 40 percent of the development, this does not apply to the first 40 percent at all.  
34 Stage 2 begins at 2,500 units and goes 5,000, which is the 40-80 percent build-out of  
35 the number of housing units. What this amendment simply says is that before Stage 2  
36 can proceed, there has to be money budgeted for a completion of whatever it takes to  
37 get this intersection working at the level it's suppose to be working at. Which is critical  
38 lane volume of 1,425. Right now it's 27% above capacity. It's projected by 2025 this  
39 intersection, Gude Drive/355 intersection, will be 55% above capacity. Reason to focus  
40 on this intersection is that it's one of the worst performing intersections in the County  
41 and is on a track to get much worse. The idea of adding 5,000 units, which is -- if you  
42 went to Stage 3 you would add 5,000 before you possibly get to this. If you eliminate  
43 that entirely then you add 6,300 without any kind of trigger. Is there any complaint that  
44 the Council hears more frequently than the development is going forward without the  
45 transportation capacity to go along with it? The idea is that these need in this area to be



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1 done in tandem. There's no question that adding the number of units that are proposed  
2 for Shady Grove will put additional pressure on this intersection. And so I guess it's  
3 question of priorities, what's more important? Is it to expedite development on land  
4 that's owned by WMATA, or is it to ensure that at the same time the development that  
5 would go forward that within four years this intersection would be unclogged so that it's  
6 working? That's the test. And for some to characterize this an amendment that was  
7 adopted in December as an eleventh hour amendment when we've received a lot of  
8 lobbying from WMATA in the last few days -- but not before that -- trying to undo it I  
9 think is certainly not the way I would characterize it. The Council when it was -- by  
10 adopting this amendment what the Council was saying is that we need to tie these two  
11 together. This is an effective way to do it clearly because it will make a difference in  
12 ensuring that that intersection is unclogged. It doesn't stop the development from going  
13 forward. The development can begin as long as the intersection is fixed. Are we gonna  
14 let the development go forward before the intersection is ready or not? That is the  
15 question. I don't think someone can vote for the amendment that's been offered and  
16 claim that they're not undoing a policy that would clearly relieve traffic at that  
17 intersection. The failed approach of the past has been that development has gone  
18 forward without the infrastructure. Here we have a chance to do it right. And the Council  
19 took an important step by unanimously supporting that. And I welcomed Mr. Silverman's  
20 amendment in December which said it did not need to be a grade separated  
21 interchange if there was another way to do it. That's fine. Whatever gets it done. Now  
22 subsequently we've learned that it's likely that only a grade separated interchange  
23 would accomplish that. Well, then that's what we need to get done. And I think it's ironic  
24 for WMATA to lobby for a measure that would clearly make traffic worse in this area if  
25 their proposal is adopted by the Council. It would be a huge reversal. It would be a big  
26 step in the wrong direction. This is a choke point. This intersection is a choke point  
27 currently for both north/south and east/west traffic. It is heavily congested much of the  
28 time. And it is a failing intersection. And that's why this intersection needs to be a trigger  
29 in the development. If this were either eliminated or moved to Stage 3, you would have  
30 80 to 100 percent of the development built before this could possibly come into play.  
31 And again this doesn't stop the development. It says you've gotta have to the funding for  
32 the transportation to support it before it can go forward. That's what this amendment  
33 does. And I think it's critical that the Council stand behind it and not reverse itself at this  
34 eleventh hour and do so in order to expedite development at this property while traffic  
35 continues to get worse. I think that what WMATA sees as a problem most people see as  
36 a solution.

37  
38 Council President Leventhal,

39 Okay, I know the Councilmembers want to hear from Mr. Counihan and I do too, I just  
40 want to make sure that every Councilmember has a chance to be heard at least once  
41 and then we'll call on WMATA.. So I'm going to call on Mr. Knapp followed by Mr.  
42 Silverman and we'll have WMATA -- Gene Counihan make his case.

43  
44 Councilmember Knapp,



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1 Thank you, Mr. President. I appreciate the remarks of my seatmate, Mr. Andrews. The  
2 concern that I have and the reason that I supported the amendment a month ago --and  
3 I'm not saying I don't support it now, I just want to get more information is that I too am  
4 frustrated as we go around not only within Montgomery County, but within the region,  
5 the notion of actually funding infrastructure appears to be the issue that we have. Yes,  
6 there have been plans that have gone forward without the infrastructure being  
7 developed be or being put in place. Although it appears as we look at things that one of  
8 the primary reasons for that is we're just not providing the funding for the infrastructure.  
9 So in my mind this amendment was a way to link those pieces together. The question I  
10 would have for -- and again to try to help us dig out of the holes of the past where  
11 development has gone forward, the infrastructure hasn't been funded, and we continue  
12 to get in a deeper hole. The question I would have for Dr. Orlin is do -- have such  
13 mechanisms be been tried previously by the Council or Councils in the past and how  
14 has that resulted in the positive implementation of transportation infrastructure?

15  
16 Dr. Glenn Orlin,

17 Well, the one that you looked at when you came up with this idea back in the fall was  
18 the Glenmont sector plan where you required that before the substantial development  
19 could happen at Glenmont that the interchange at Georgia Avenue and Randolph Road  
20 be programmed or alternatively other improvements that would get you to the same  
21 point in terms of congestion relief. That plan was adopted in '97, thank you.

22  
23 Multiple Speakers,  
24 1997.

25  
26 Dr. Glenn Orlin,

27 That interchange is still not programmed for construction, although it's very high up on  
28 the list. And probably will be the next large project that is funded by the state if and  
29 when they ever get around to funding more projects. So it's been the last eight years I  
30 guess before this, eight or nine years. That's probably the best corollary.

31  
32 Councilmember Knapp,

33 So we have one example and it's still not funded and so as a result neither  
34 transportation improvement has occurred nor has the issue of actually creating the  
35 housing that we are trying to address and this gets addressed either.

36  
37 Dr. Glenn Orlin,

38 Right, and in the discussions the Council's had in terms of prioritizing state projects  
39 whether or not development happens at Glenmont has not been a priority in deciding  
40 that George Avenue/Randolph should be high up, it was more of a matter of the need at  
41 that intersection in terms of congestion and the ability of the state to move forward on it.

42  
43 Councilmember Knapp,

44 So this intersection is where on the overall status.



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1 Dr. Glenn Orlin,  
2 Look on circle -- the last three pages of the packet. You will see first on circle 54 the  
3 recommendation of the four biggies, if you will, not in any order. The Bicounty Transit  
4 Way, Corridor Cities Transit Way, the widening of I-270 for HOV north of Shady Grove  
5 and the widening of the Beltway in the section between the west spur and Virginia,  
6 those projects in total are in the range of \$4 billion. Then on top of page circle 55 you  
7 see the more local County -- they're state highways, but they're more local to  
8 Montgomery County in terms of their need. These were all in project planning at the  
9 state level. They total \$820 million. You see George Avenue/Randolph is number two  
10 on that list. So that's close to another billion dollars. Then you see below that on the  
11 bottom circle 55 the projects which have not even go into project planning yet and you  
12 will see as number 4 on the list the 355/Goudy interchange. Above it are two very  
13 expensive projects and one moderately expensive project, so that's where I get my  
14 estimate about \$5 billion of projects in front of this one.

15  
16 Councilmember Knapp,  
17 And the George Avenue/Randolph Road interchange was where on the list in '97?

18  
19 Dr. Glenn Orlin,  
20 On circle 55.

21  
22 Councilmember Knapp,  
23 No in 1997 where was it.

24  
25 Dr. Glenn Orlin,  
26 I don't know. I don't think it was even on the list at that point.

27  
28 Councilmember Knapp,  
29 So it got on the list not exclusively as a result of doing this but certainly as that was one  
30 of the factors.

31  
32 Unidentified Speaker,  
33 [ INAUDIBLE ]

34  
35 Councilmember Knapp,  
36 No, and that was my motivation for supporting the amendment in the first place. I just  
37 wanted -- we're trying to do a couple different things here. I think I clearly want to get to  
38 the housing units, because we've all talked about the need to do that. By the same  
39 token I appreciate the triggers and I've been wrestling whether the triggers are solid  
40 enough to make sure we can put the infrastructure in place, because I think the  
41 community has raised the right issues.

42  
43 Dr. Glenn Orlin,



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1 By the way, just in terms of the housing units. The Stage 1 is 40 percent of the housing  
2 units of the plan. And 22 percent of the jobs. Stage two is 56 of the housing units and 38  
3 percent of the jobs, cumulative. So most the development is in Stage 3.

4  
5 Councilmember Knapp,  
6 Okay. Thanks.

7  
8 Council President Leventhal,  
9 Mr. Silverman.

10  
11 Councilmember Silverman,  
12 Thank you Mr. President. First of all this is a 20-year plan. Second of, all last time I  
13 checked, with all due respect to WMATA as an institution, they don't move particularly  
14 fast when it comes to development. They take an eternity when it comes to  
15 development. This is not a situation where the wolf is at the door and if we keep this  
16 amendment in place that that's gonna set back the WMATA development by five years.  
17 I would be stunned if it even moved at a snail's pace within the next five years. What  
18 this will do is create an extraordinary amount of pressure for both the County, the  
19 community, housing advocates, and WMATA to want to get this particular intersection  
20 moved up on the state priority list if we're talking about an actual grade separated  
21 interchange, or find some other way that Glenn has not come up with for getting -- not  
22 that you are not the all knowing, all seeing Glenn -- but it will create some real pressure  
23 to do what I think we need to do when we're talking about smart growth, which is to  
24 make sure that we're providing housing opportunities but are not making things worse  
25 for existing communities. We cannot put housing around Metros, in my opinion, without  
26 making sure we have provided some extensive traffic mitigation as well as hopefully  
27 making things better. I would also say that I think which intersection interchange was  
28 magically moved up in the last couple of years, Glenn? 124? It somehow managed to  
29 somehow jump the queue many places because of one of our friends down in  
30 Annapolis. So the fact that it's not on the drawing board at this point, if we have a  
31 concerted effort by the developer, WMATA, the community, housing advocates, and the  
32 County to say, "You know, if we don't get this done we're not gonna be able to advance  
33 our concept of smart growth," then we should proceed as we are. This is the impetus.

34  
35 Dr. Glenn Orlin,  
36 Two things: First of all if that in fact happens something else that's higher the Council's  
37 priority will drop.

38  
39 Councilmember Silverman,  
40 Limited pie theory, Glenn. Limited pie.

41  
42 Dr. Glenn Orlin,  
43 The second thing...

44  
45 Councilmember Silverman,



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1 We've been talking for years about the need to expand the pie. Expand the  
2 transportation budget at the state level. So I categorically reject the idea that we're  
3 moving this ahead of another interchange or another improvement.

4  
5 Dr. Glenn Orlin,  
6 Unless you find \$5 billion you would be. But more importantly I'm shocked to hear this  
7 from you, Mr. Silverman. The PHED Committee...

8  
9 Councilmember Silverman,  
10 It's January, wait until you hear what I'm saying in May.

11  
12 [ laughter ]

13  
14 Dr. Glenn Orlin,  
15 The Committee.

16  
17 Councilmember Silverman,  
18 Go ahead, Glenn.

19  
20 Dr. Glenn Orlin,  
21 Several times during the Committee's work session you made a point of this. Is that  
22 congestion will not be made worse by this plan. This staging plan says -- without the  
23 settlement, without the settlement -- it says no intersection will get worse than it is now if  
24 it's above the standards.

25  
26 Council President Leventhal,  
27 Are you responding to a question.

28  
29 Dr. Glenn Orlin,  
30 Yes I am.

31  
32 Councilmember Silverman,  
33 Except, Glenn, the bottom line is we have an opportunity to basically get everybody to  
34 push forward to get this thing accelerated and I don't have a problem with that. It will  
35 make things better. Not just keep things status quo.

36  
37 Council President Leventhal,  
38 Mr. Counihan.

39  
40 Gene Counihan,  
41 Thank you. I've enjoyed a lot of things, but this afternoon's been most interesting. I am  
42 Gene Counihan. I am the Maryland Government Relations Officer for Metro. Scott [   
43 INAUDIBLE ] who has been working with this from our planning office is also with me.  
44 And as you know just from experience we are not frequent testifiers. You do not receive  
45 frequently letters from Metro stating positions or concerns about what you're doing. We





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1 followed this process admittedly toward the end we missed a few and I apologize for  
2 that being a little bit late catching up with this particular amendment, this intersection  
3 amendment. I was a little distracted with a hospital stay in there. But we are -- when we  
4 discovered this amendment we came in at the eleventh hour after 18 meetings, the  
5 PHED Committee had and worked very hard on this. After over a year that the Planning  
6 Board and the Planning Board staff worked on it. This was not part of the proposal. We  
7 had read assurances that this development plan as it was put together would not  
8 increase or add congestion to the intersection. It was only when we saw this that we  
9 said hey you know this is a potential problem. We believe it's probably at least five years  
10 before we could advertise this to be available -- our land to be available to a developer  
11 to solicit a proposal. We believe with this in there it's at least 15 or 20 years away.  
12 Adding at least 10 years to the amount of time or the delay in trying to get there. Mr.  
13 Silverman -- Councilman Silverman talked about we have not been lightning fast with  
14 development. Unfortunately, we don't control the timing of development. Market forces  
15 have a lot more to do with that, developer interest and feeling ability to afford and move  
16 forward with a profitable project has a lot more to do with that. We advertise or seek  
17 solicitations on a regular basis on properties as they're available. But we don't always --  
18 aren't able to always generate the interest in that property. I think that as said this  
19 particular amendment is one that we said this is especially troublesome given the  
20 amount of work, given the interest at this Council and the Planning Board have had in  
21 transit friendly development, we believe it came about it at the eleventh hour, very late. I  
22 don't know that it had full consideration or people were aware of the potential to delay  
23 the kind of development that I believe this Council has worked very hard to achieve at  
24 the Shady Grove site. And this amendment as it is -- I am talking about the amendment  
25 that was put on in November, has the potential I think of significantly or dramatically  
26 interfering with achieving the objectives of the whole work of revising a sector plan that's  
27 before you.

28  
29 Council President Leventhal,  
30 Ms. Floreen?

31  
32 Councilmember Floreen,  
33 Thank you. Mr. Berlage...

34  
35 Derick Berlage,  
36 Yes, ma'am.

37  
38 Councilmember Floreen,  
39 what do you have to say about this issue? This is something that Council added in. It  
40 was not part of the Planning Board's recommendations. How important is this as a  
41 priority?

42  
43 Derick Berlage,  
44 Well, this will probably be another moment for independent, professional, and unpopular  
45 advice from us. We essentially agree with Mr. Counihan and mostly we agree with the



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1 analysis that your staff has done in the staff memo which shows that with pulling this  
2 particular intersection out there are a number of intersections one could pull out and  
3 apply as a trigger. This one is quite distance from the Shady Grove development so it  
4 doesn't make a great deal of sense to identify this one but the most important point is  
5 the point that has been made by several speakers that we only have 12 Metro Stations  
6 in the County. This Shady Grove station is our single best opportunity to create smart  
7 growth development and deferring for many years its realization as a smart growth  
8 community because of this intersection we think that that is not, if you balance the traffic  
9 congestion issues, which are legitimate, against the smart growth issues, which are also  
10 very legitimate, we're better off moving forward. Mr. Hardy can give you a more specific  
11 discussion of the transportation reasons we feel that this would be...

12  
13 Councilmember Floreen,

14 I wanted to hear your position as Chair of the Planning Board and the, you know, the  
15 drafter of this plan. If we were to proceed with the language as it's currently exists,  
16 basically we would be in the position of having to jump over a number of other worthy  
17 projects in the transportation program that we have spent a lot of time working with the  
18 delegation on. If you have your packet in front of you, Mr. Berlage, on Circle 55 it has a  
19 list. Basically this would -- I don't -- I'll be the first one to support adding money to the  
20 state transportation budget and the County transportation budget, which is taking a hit  
21 right this minute, but the real issue a sense of priorities. And the question is do we  
22 prioritize roadways in smart growth areas over roadways in non-smart growth areas  
23 such as Woodfield Road, the Brookfield Bypass, Georgia/Norbeck, Spencerville Road,  
24 Norbeck Road? Would you recommend that we prioritize an intersection in a smart  
25 growth area over some of the other improvements on that list?

26  
27 Derick Berlage,

28 Like you, we go through this list once a year as a board and there are a lot of factors  
29 that go into the ordering of lists. It's not just about smart growth. So I am not in a  
30 position to rework the list today. I know the Council isn't either. I would simply again  
31 state that we believe that the Shady Grove -- development of the Shady Grove Metro  
32 Station area should be a very high priority, a key part of the vision that this County has  
33 for its future land use. And that tying it to an intersection improvement that is likely to be  
34 many, many years in the future is not the way to go. We are better off creating the  
35 housing, creating the transit oriented development which we know there's going to be  
36 growth in the County. We know we need to locate it in these particular types of  
37 locations. As important as reducing traffic congestion everywhere is, the value -- the  
38 added value from this particular intersection improvement is not such, as the analysis  
39 from your staff shows, to justify throwing a significant monkey wrench into the Shady  
40 Grove plan's realization.

41  
42 Councilmember Floreen,

43 Yeah, I have to say I agree with you. I'm very concerned about what this would do with  
44 our \$820 million worth of priorities that we have at this moment in time. And it really  
45 would hold this particular intersection to a different standard than as Glenn points out



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1 route 355 at Shady Grove or Redland Road or any other intersection in the sector plan.  
2 I am not sure that prioritizing this over other things achieves the attended objective and  
3 the analysis is really that the current standards in and of themselves will do much to  
4 create pressure for improvements, in fact, will create the incentive for an effective  
5 transportation management. Because these goals don't -- there's no option in terms of  
6 meeting them in order for any project to proceed. So I would urge support of the motion  
7 before us I think it makes sense in terms of planning. It certainly makes sense in terms  
8 of state transportation priorities and I would absolutely agree though with Mr. Andrews  
9 that we need to get this project into -- to planning. So that it will get built and will get in a  
10 position to be constructed the way the intersection at Randolph and Georgia currently  
11 is. Isn't that the distinction between this and Glenmont? I had not appreciated that last  
12 month when we took this up that actually Georgia was in a different situation, at least at  
13 this point and time. Okay.

14  
15 Council President Leventhal,

16 Okay the motion before the Council is to delete the language previously agreed to that  
17 would say that the plan cannot go to Stage 2 until the interchange at Gude Drive and  
18 Route 355 is improved or an equivalent amount of traffic reduction is achieved. Those in  
19 favor of the amendment will signify by raising their hands. That would be Ms. Floreen  
20 and Mr. Subin. Those opposed will signify by raising their hands. That would be  
21 everybody else. The vote is 7-2. The amendment doesn't carry. That was a substitute to  
22 the underlying amendment by Ms. Floreen which would be to adopt the  
23 recommendation by Dr. Orlin that would impose the Gude Drive/Route 355  
24 improvement before the Shady Grove master plan could proceed to Stage 3. Those in  
25 favor of that amendment will signify by raising their hands. That would be Ms. Floreen  
26 and Mr. Subin and Mr. Knapp. Those opposed will signify by raising their hands. That  
27 would be Mr. Denis, Mr. Silverman, Mr. Andrews, Mr. Perez, Ms. Praisner, and myself.  
28 The motion fails on a vote of 3-6. That then takes us to adoption of the Shady Grove  
29 master plan. Those in favor of the Shady Grove master plan will -- Oh, I'm sorry  
30 Chairman Silverman wanted to make some final comments.

31  
32 Councilmember Silverman,

33 I'm sorry just 30 seconds, I don't know if other people do. I wanted to thank some  
34 people real quickly. Certainly Marlene and Karen for whatever -- above and beyond the  
35 call of duty. Have pleasanter dreams, Karen. I also want to thank the Shady Grove  
36 citizens for their participation in this. Pat's sitting out there and I know others and Pam  
37 was just about to leave over there, but thank you very much [Pam Lindstrom] for all of  
38 your suggestions. I also want to thank the folks from AIM who are here today and who  
39 have along with others been such staunch advocates for housing in Montgomery  
40 County and I also want to thank the folks from the Sierra Club, Washington Regional  
41 Networks, Solutions Not Sprawl, and other folks who wrote in, if I have the names  
42 correct, who wrote in advocacy of what I think is a shining example of smart growth for  
43 Montgomery County. Thank you.

44  
45 Council President Leventhal,



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1 Okay. Closing comments from Mr. Andrews?

2  
3 Councilmember Andrews,

4 Thank you, Mr. President. Well, there are many people that worked long and hard on  
5 this plan and they deserve a lot of thanks for sticking with it over more than five years.  
6 Karen Kumm, the community, some of whom have left. But folks like [Pam Lindstrom],  
7 Bill and Pat [Labuda], Jim [Snee], [Kay Ganon], Ken [Weiss], and many, many others,  
8 Shelley Winkler, John Compton, and many, many staff, John Carter, and many, many  
9 others who have worked on this plan. My colleagues put a great deal of time into this. I  
10 appreciate it, it is definitely a better plan I think than came over here. But although there  
11 are many good aspects of the plan including the amount of affordable housing, including  
12 Blueberry Hill, including legacy open space, including the amenities that are in the plan,  
13 what I was not able to support was the total level that was proposed for the plan. And  
14 that was my sticking point. Originally the charrette plan had a proposal of approximately  
15 4,000 housing units. That was changed significantly at the Planning Board to the current  
16 number of about 6,340. I thought that was too much for the area to support given the  
17 level of congestion and development that's already there. I do think there should be  
18 more development at Metro Stations than other places but I think there is a limit  
19 anywhere, and I think this is more than is reasonable at a Metro Station at least at this  
20 one given what is already there in terms of existing development and congestion. So  
21 that was a sticking point for me and was not one that could be resolved given that the  
22 density -- the number as opposed to the density has not changed. So while I applaud all  
23 the good work and I recognize there are many good aspects of the plan, I think it is  
24 overall too much for the area and that's why I am going to vote against it.

25  
26 Council President Leventhal,  
27 Ms. Praisner.

28  
29 Councilmember Praisner,

30 This is a very complicated plan, they seem to be so these days and I think given what  
31 Dr. Hanson said this morning about as we become a more developed community and  
32 we're talking about talk both about smart growth, which is a term everybody seems to  
33 be embracing, but the devil in the detail with smart growth as well as everything else  
34 that is infill development or redevelopment. This is a very complicated made even more  
35 so by all of the discussion about public facilities that might or might not be relocated to  
36 the extent that the community has made input they've improved on the plan. I still have  
37 on-going concerns about the master plan process as we define it. I think there needs to  
38 be ways that have an on-going community participation beyond the charrette and  
39 interactions that we have lately or the more informal kinds of non-on-going participation.  
40 I really want to see community members at the table through the whole planning  
41 process, including the master plan in front of the Committee and the Council, not being  
42 called on periodically when they feel they have a burning need to say something about  
43 something specific, but to have more ownership and participation on an on-going basis.  
44 The devil in this plan will be the implementation of it. And all those folks who are so  
45 enthusiastic about more housing, it will be a long time before the full housing



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1 implementation occurs. Smart growth requires not just the density but the infrastructure,  
2 whether it is transportation infrastructure, but also the amenities and the quality of life  
3 issues that are necessary to attract and retain the community that may find living near  
4 Metro or living near our major infrastructure an initial attractive element, but the question  
5 of sustaining that over time is a question of having the amenities and the quality of  
6 design. I think the issue of quality of design is the reason why the Shady Grove  
7 Advisory Committee must be created and get up and running immediately. Because  
8 while housing is hot right now, there are a lot of issues that I have with the designs I'm  
9 seeing for housing. I think we need to see a little more creativity and we need to focus  
10 on what makes development more attractive on an on-going basis. This master plan  
11 also has problems associated with the fact that it is not internally balanced. And the  
12 question of whether the master plan is balanced from the standpoint of transportation  
13 and development -- jobs and housing and development is a major issue. It has led me in  
14 the past not to vote for master plans, Potomac being one of them. But I've decided in  
15 this case because of the staging associated with the trigger mechanisms that will limit  
16 the development and also with the capacity of infrastructure that could be developed on  
17 an on-going basis later in the implementation process that I will support the plan. But I  
18 do think the critical issue for this plan is going to be the community that exists and the  
19 community that will come being directly, intimately, and continually involved in not only  
20 the development but in the quality of life on an on-going basis. And that will require their  
21 interaction and engagement, not just with the Planning Board, but with the County  
22 Council on an on-going basis. The other issue that concerns me is we're going to soon  
23 vote on a new zone. And that issue, based on the conversations we had, again, this  
24 morning, is land issues looking at existing zones rather than continuing to bring us  
25 zones and getting the Planning Board staff and Planning Board members to be attuned  
26 when they bring us a zone about the complexities of that zone and the issues of  
27 implementation that need to be continually monitored. So, whether it is the community  
28 planner for the area or the development reviewers or the Planning Board members  
29 when it comes to implementation of these complex zones we need to have continual  
30 interactions about that implementation as well. So I would suggest some kinds of  
31 conversations about how is the zone working. Are there issues associated with  
32 implementation? Is there language that needs to be refined? And how can we use this  
33 zone more directly elsewhere rather than continually to create new zones. Thank you.  
34 Thank you to everyone who participated.

35  
36 Council President Leventhal,

37 Okay, at the hour of 5:15 I thought we were ready to vote but additional lights have  
38 gone on. Ms. Floreen.

39  
40 Councilmember Floreen,

41 Thank you. I just wanted to follow up on -- well, I agree with Ms. Praisner on a couple of  
42 the key points. I think from the Planning Board, Derick, we need to go back to having a  
43 citizen's advisory board on these plans. That is the one consistent refrain from  
44 community members far and wide. There's no consistency of community involvement,  
45 we get a fragmented group, and it is very difficult for the community to become engaged



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1 and to become advocates, leader, educators to their communities on these issues. I  
2 think we really need to use this as an opportunity to revisit that decision that was made  
3 some time ago. So I absolutely agree with Ms. Praisner on that point. The other point --  
4 and I think is what she just was referring to -- but I think I -- I'd like to put it more plainly:  
5 you should not send us another plan that has big ideas without an implementation  
6 strategy. If that is one thing we've learned from Clarksburg, it's that it's not just the  
7 thinking, it's the doing. And when you're engaging different agencies across -- we have  
8 the school system here for the first time, on the last day of the plan; that's not right. We  
9 should have -- revisit how we engage government agencies in terms of how a plan is  
10 put together and how it's going to be implemented. If we did the work at the beginning  
11 we would not spend all this time on it in the end, or an hour discussing whether or not  
12 an off-site location for Counties facilities would be addressed in this plan or not. This is  
13 a new age and we really need to have some new practices and procedures to address  
14 how we're going to continue with planning exercises. I don't know what it's in the  
15 Damascus plan. We'll find out at the public hearing what's positive and what's negative.  
16 But I'll be looking at any initiatives there and what precisely you proposed to support  
17 those initiatives. And if they're not there I don't think this Council should be doing it. I  
18 think the Planning Board and its staff should be doing it. That's just an observation and  
19 a request and really direction. We've got to do this differently. The old parameters aren't  
20 working. Maybe we have to have whatever it was -- 17 PHED Committee work sessions  
21 -- and "X" number of Council work sessions on something. These are difficult things, but  
22 we need you guys to be the leaders on this and to anticipate the kinds of problems.  
23 Let's hope that this kind of plan, which is as complicated as a plan can be, is going to be  
24 unique, but I suspect it isn't. As we get into new areas of community concern,  
25 development concern, and policy concern we need to get a coordinated package, and  
26 that work needs to be done at the Planning Board office.

27  
28 Council President Leventhal,

29 Okay, we're going to vote. Those in favor of the Shady Grove master plan will signify by  
30 raising their hands. That would be Mr. Denis, Ms. Floreen, Mr. Subin, Mr. Silverman, Mr.  
31 Knapp, Mr. Perez, Ms. Praisner, and myself. Those opposed include Mr. Andrews. The  
32 vote is 8-1 and the Shady Grove master plan is adopted. We will move immediately to  
33 action on Zoning Text Amendment 05-02 the TOMX zone. Do you we need to discuss it  
34 or can we go right to a vote? It requires a roll call vote. The Clerk will call the roll.

35  
36 Councilmember Silverman,  
37 We're not meeting first.

38  
39 Councilmember Praisner,  
40 Oh, okay.

41  
42 Council President Leventhal,  
43 The Clerk will call the roll.

44  
45 Council Clerk,



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1 Mr. Denis.

2  
3 Councilmember Denis,  
4 Yes

5 Council Clerk,  
6 Ms. Floreen.

7  
8 Councilmember Floreen,  
9 Yes.

10  
11 Council Clerk,  
12 Mr. Subin.

13  
14 Councilmember Subin,  
15 Yes.

16  
17 Council Clerk,  
18 Mr. Silverman.

19  
20 Councilmember Silverman,  
21 Yes.

22  
23 Council Clerk,  
24 Mr. Knapp.

25  
26 Councilmember Knapp,  
27 Yes.

28  
29 Council Clerk,  
30 Mr. Andrews.

31  
32 Councilmember Andrews,  
33 Yes.

34  
35 Council Clerk,  
36 Mr. Perez.

37  
38 Councilmember Perez,  
39 Yes

40 Council Clerk,  
41 Ms. Praisner.

42  
43 Councilmember Praisner,  
44 Yes.



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1 Council Clerk,  
2 Mr. Leventhal.

3  
4 Council President Leventhal,  
5 Yes. The vote is unanimous; our next ZTA is 05-09, Wholesale Trade Uses, I-3 Zone.  
6 Ms. Praisner.

7  
8 Councilmember Praisner,  
9 I just wanted to ask that the TOMX zone, that we get a monitoring process on these  
10 complex zones. Maybe we can work in the PHED Committee on how we do that.

11  
12 Council President Leventhal,  
13 Okay. The vote on ZTA 05-09 the Clerk will call -- I'm sorry, more commentary. Mr.  
14 Andrews.

15  
16 Councilmember Andrews,  
17 Mr. Leventhal, I know there were some suggestions about private institutional facilities  
18 and how they might be brought into the TOMX zone. I hope the PHED Committee will  
19 look into that in the near future and see how that might work.

20  
21 Council President Leventhal,  
22 I share your hope Mr. Andrews. On ZTA 05-09, the Clerk will call the roll.

23  
24 Council Clerk,  
25 Mr. Denis.

26  
27 Councilmember Denis,  
28 Yes.

29  
30 Council Clerk,  
31 Ms. Floreen.

32  
33 Councilmember Floreen,  
34 Yes.

35  
36 Council Clerk,  
37 Mr. Subin.

38  
39 Councilmember Subin,  
40 Yes.

41  
42 Council Clerk,  
43 Mr. Silverman.

44  
45 Councilmember Silverman,





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1 Yes.

2  
3 Council Clerk,  
4 Mr. Knapp.

5  
6 Councilmember Knapp,  
7 Yes.

8  
9 Council Clerk,  
10 Mr. Andrews.

11  
12 Councilmember Andrews,  
13 Yes.

14  
15 Council Clerk,  
16 Mr. Perez.

17  
18 Councilmember Perez,  
19 Yes.

20  
21 Council Clerk,  
22 Ms. Praisner.

23  
24 Councilmember Praisner,  
25 Yes.

26  
27 Council Clerk,  
28 Mr. Leventhal.

29  
30 Council President Leventhal,  
31 Yes. On ZTA-0506 building materials and supplies R&D Zone. The Clerk will call the  
32 roll.

33  
34 Council Clerk,  
35 Mr. Denis.

36  
37 Councilmember Denis,  
38 Yes.

39  
40 Council Clerk,  
41 Ms. Floreen.

42  
43 Councilmember Floreen,  
44 Yes.



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1 Council Clerk,  
2 Mr. Subin.

3  
4 Councilmember Subin,  
5 Yes.

6  
7 Council Clerk,  
8 Mr. Silverman.

9  
10 Councilmember Silverman,  
11 Yes.

12  
13 Council Clerk,  
14 Mr. Knapp.

15  
16 Councilmember Knapp,  
17 Yes.

18  
19 Council Clerk,  
20 Mr. Andrews.

21  
22 Councilmember Andrews,  
23 Yes.

24  
25 Council Clerk,  
26 Mr. Perez.

27  
28 Councilmember Perez,  
29 Yes.

30  
31 Council Clerk,  
32 Ms. Praisner.

33  
34 Councilmember Praisner,  
35 Yes.

36  
37 Council Clerk,  
38 Mr. Leventhal.

39  
40 Council President Leventhal,  
41 Yes, the vote is unanimous. The last item on the Council's agenda for today is the  
42 introduction of a special appropriation to the County government's FY-06 operating  
43 budget in the amount of \$300,000 to reimburse some expenses of the Clarksburg Town  
44 Center Advisory Committee. The sponsor is Mr. Knapp, the source is General Fund  
45 Reserves, no vote is required. This is matter without objection will be added to the



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1 Council's agenda and the bill will be introduced. Hearing no objection the bill is  
2 introduced. The Council is adjourned until 7:00 p.m. when we will public hearings on the  
3 Clarksburg matter. Yes. Ms. Floreen.  
4

5 Councilmember Floreen,

6 With respect to that resolution, I have no copy or anything, but I would like to say for the  
7 record if this goes -- set for hearing or whatever, which I assume it will be, I would like to  
8 have clear advice from staff as to the standards traditionally employed in evaluating  
9 requests for attorney fees in other governmental environments what the rules currently  
10 are in the County, state, and in appropriate other levels of government, and the criteria  
11 for assessment of those fees.  
12

13 Council President Leventhal,

14 The public hearing date has not been scheduled and there will be ample time to request  
15 from staff whatever information we would get from staff. The Council stands adjourned  
16 until the hour of 7:00 P.M.  
17